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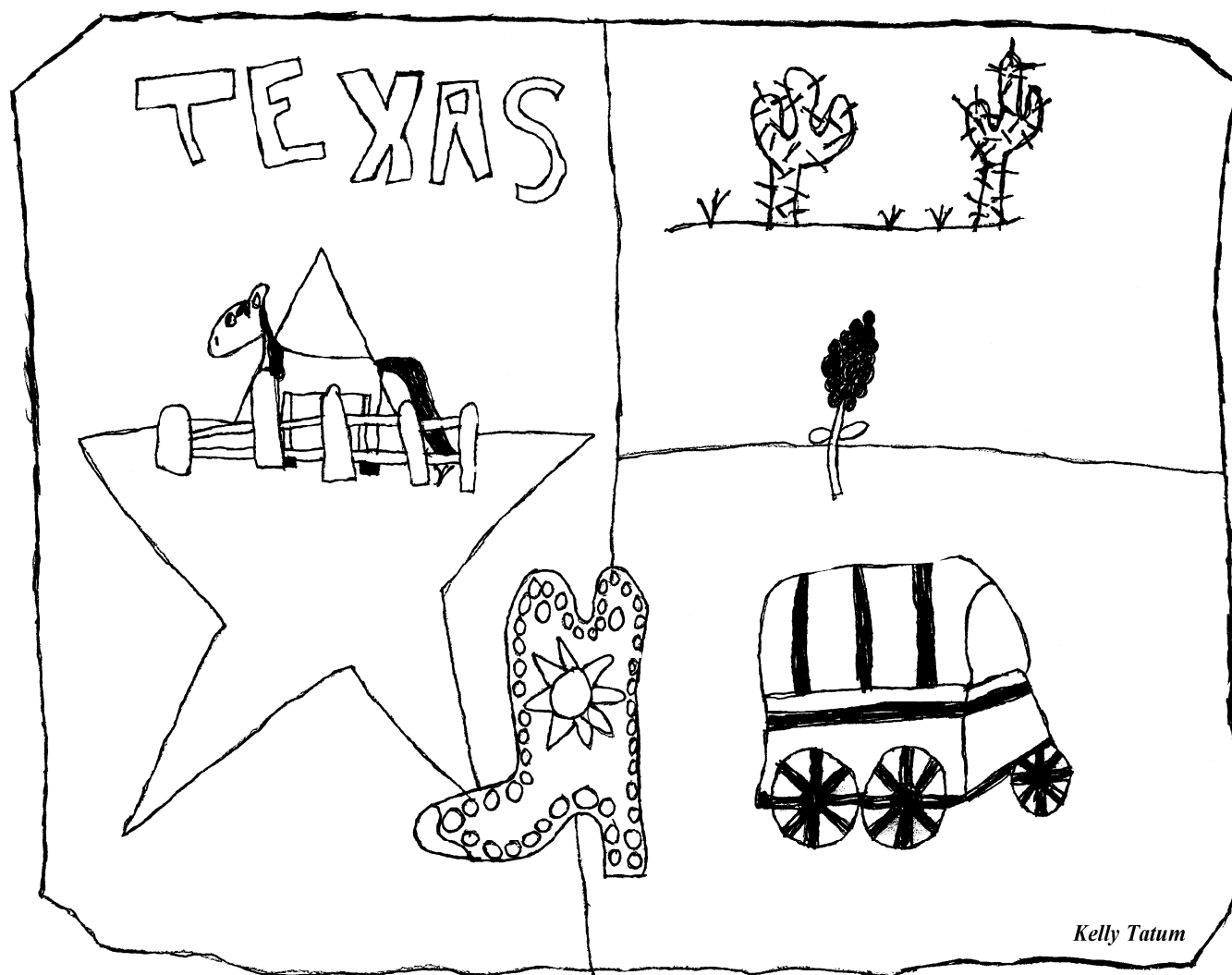
# TEXAS REGISTER

*Volume 34 Number 36*

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School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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# THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

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## Appointments

### Appointments for August 3, 2009

Appointed to the University of North Texas System Board of Regents for a term to expire May 22, 2015, Michael R. Bradford of Midland (replacing Rice Tilley of Fort Worth whose term expired).

Appointed to the University of North Texas System Board of Regents for a term to expire May 22, 2015, Steve Mitchell of Richardson (replacing Gayle Strange of Denton whose term expired).

Designating Robert W. Pearson as presiding officer of the Texas Emerging Technology Advisory Committee for a term at the pleasure of the Governor. Mr. Pearson is replacing William Morrow of Spring Branch as presiding officer.

Appointed to the Finance Commission of Texas for a term to expire February 1, 2012, David Cibrian of San Antonio (replacing Michael Bradford of Midland who resigned).

Appointed to the Chronic Kidney Disease Task Force for a term at the pleasure of the Governor, Carolyn R. Atkins of Dallas (reappointment).

Appointed to the Chronic Kidney Disease Task Force for a term at the pleasure of the Governor, Robert L. Collazo-Maldonado of Irving (reappointment).

Appointed to the Chronic Kidney Disease Task Force for a term at the pleasure of the Governor, Ahmed Osama Gaber of Houston (reappointment).

Appointed to the Chronic Kidney Disease Task Force for a term at the pleasure of the Governor, Lisa Genna of Austin (reappointment).

Appointed to the Chronic Kidney Disease Task Force for a term at the pleasure of the Governor, Rita L. Littlefield of Austin (reappointment).

Appointed to the Chronic Kidney Disease Task Force for a term at the pleasure of the Governor, Elena Longoria Marin of Brownsville (reappointment).

Appointed to the Chronic Kidney Disease Task Force for a term at the pleasure of the Governor, Jayaram B. Naidu of Odessa (reappointment).

Appointed to the Chronic Kidney Disease Task Force for a term at the pleasure of the Governor, Charles R. Nolan of Boerne (reappointment).

Appointed to the Chronic Kidney Disease Task Force for a term at the pleasure of the Governor, Marolyn W. Stubblefield of San Antonio (reappointment).

Appointed to the Chronic Kidney Disease Task Force for a term at the pleasure of the Governor, Smitta Vaidya of Houston (reappointment).

Appointed to the Chronic Kidney Disease Task Force for a term at the pleasure of the Governor, Susan S. Wiggans of Bellaire (reappointment).

Appointed to the Chronic Kidney Disease Task Force for a term at the pleasure of the Governor, Marinan Renz Williams of Belton (reappointment).

Appointed as Judge of the 441st Judicial District Court, Midland County, pursuant to HB 4833, 81st Legislature, Regular Session, effective October 1, 2009, for a term until the next General Election and until his successor shall be duly elected and qualified, Rodney W. Satterwhite of Midland.

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2011, LaShonda Brown of Missouri City (replacing Dorothy Calhoun of Missouri City who no longer qualifies).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2015, Terry Beattie of Austin (Mr. Beattie is being reappointed).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2015, Beth Engelking of Austin (Ms. Engelking is being reappointed).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2015, Barbara L. Fountain of Leander (replacing Lesa Walker of Austin whose term expired).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2015, Laura Logan Kender of Lubbock (Ms. Kender is being reappointed).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2015, Katherine L. Lee of Gatesville (Ms. Lee is being reappointed).

### Appointments for August 7, 2009

Appointed to the Sabine River Authority Board of Directors for a term to expire July 6, 2015, Cary M. "Mac" Abney of Marshall (replacing Richard Linkenauger of Greenville whose term expired).

Appointed to the Sabine River Authority Board of Directors for a term to expire July 6, 2015, Connie Wade of Longview (Ms. Wade is being reappointed).

Appointed to the Sabine River Authority Board of Directors for a term to expire July 6, 2015, Constance M. Ware of Marshall (Ms. Ware is being reappointed).

Appointed to the Advisory Panel on Recreational Boating Safety, pursuant to HB 3108, 81st Legislature, Regular Session, effective September 1, 2009, for a term at the pleasure of the Governor, Lance K. Bruun of Fulton. Mr. Bruun will serve as the presiding officer of the panel.

Appointed to the Advisory Panel on Recreational Boating Safety, pursuant to HB 3108, 81st Legislature, Regular Session, effective September 1, 2009, for a term at the pleasure of the Governor, Willard "Will" Kirkpatrick of Broadus.

Appointed to the Advisory Panel on Recreational Boating Safety, pursuant to HB 3108, 81st Legislature, Regular Session, effective September

ber 1, 2009, for a term at the pleasure of the Governor, Douglas "Rod" Malone of Austin.

Appointed to the Jobs and Education for Texans (JET) Grant Program Advisory Board, pursuant to HB 1935 and HB 3, 81st Legislature, Regular Session, for a term to expire June 19, 2011, Katie D. Stavinoha of The Woodlands.

Appointed to the Lower Neches Valley Authority Board of Directors for a term to expire July 28, 2015, Mary "Sue" Cleveland of Lumberton (reappointment).

Appointed to the Lower Neches Valley Authority Board of Directors for a term to expire July 28, 2015, Jimmie R. Cooley of Woodville (reappointment).

Appointed to the Lower Neches Valley Authority Board of Directors for a term to expire July 28, 2015, Kathleen Jackson of Beaumont (reappointment).

Appointed to the Gulf Coast Waste Disposal Authority Board of Directors, effective August 31, 2009, for a term to expire August 31, 2011, Zoe M. Barinaga of Houston (Ms. Barinaga is being reappointed).

Appointed to the Board for Lease of Texas Department of Criminal Justice Lands, effective September 1, 2009, for a term to expire September 1, 2011, Wesley Lloyd of Waco (Mr. Lloyd is being reappointed).

Appointed to the Board for Lease of Texas Parks and Wildlife Lands, effective September 1, 2009, for a term to expire September 1, 2011, Wesley Lloyd of Waco (Mr. Lloyd is being reappointed).

#### **Appointments for August 10, 2009**

Appointed to the Texas Youth Commission, effective September 1, 2009, for a term to expire September 1, 2011, Joseph D. Brown of Sherman.

Appointed to the Texas Youth Commission, effective September 1, 2009, for a term to expire September 1, 2011, Larry Carroll of Midland.

Appointed to the Texas Youth Commission, effective September 1, 2009, for a term to expire September 1, 2011, Ellen T. Cokinos of Houston.

Appointed to the Texas Youth Commission, effective September 1, 2009, for a term to expire September 1, 2011, Scott W. Fisher of Bedford. Mr. Fisher will serve as presiding officer of the commission.

Appointed to the Texas Youth Commission, effective September 1, 2009, for a term to expire September 1, 2011, Manson B. Johnson, II of Houston.

Appointed to the Texas Youth Commission, effective September 1, 2009, for a term to expire September 1, 2011, Daniel G. Rios of Edinburg.

Appointed to the Texas Youth Commission, effective September 1, 2009, for a term to expire September 1, 2011, David D. Teuscher of Beaumont.

Appointed as the Texas Youth Commission Independent Ombudsman, effective September 1, 2009, for a term to expire February 1, 2011, Catherine S. Evans of Dallas (replacing Will Harrell of Austin who resigned).

Appointed to the Texas Radiation Advisory Board for a term to expire April 16, 2015, Amy M. Clark of Floresville (replacing Troy Marceleno of Duncanville whose term expired).

Appointed to the Texas Radiation Advisory Board for a term to expire April 16, 2015, Ian Scott Hamilton of Cypress (replacing Michael Ford of Amarillo whose term expired).

Appointed to the Texas Radiation Advisory Board for a term to expire April 16, 2015, Lawrence R. Jacobi of Austin (Mr. Jacobi is being reappointed).

Appointed to the Texas Radiation Advisory Board for a term to expire April 16, 2015, Nora A. Janjan of Navasota (Dr. Janjan is being reappointed).

Appointed to the Texas Radiation Advisory Board for a term to expire April 16, 2015, Melanie R. Marshall of Mansfield (Dr. Marshall is being reappointed).

Appointed to the Texas Radiation Advisory Board for a term to expire April 16, 2015, David Nichols of Austin (replacing Kim Howard of Longview whose term expired).

Appointed to the Red River Authority of Texas Board of Directors, effective August 11, 2009, for a term to expire August 11, 2015, Jerry B. Daniel of Truscott (reappointment).

Appointed to the Red River Authority of Texas Board of Directors, effective August 11, 2009, for a term to expire August 11, 2015, George Wilson Scaling, II of Henrietta (reappointment).

Appointed to the Red River Authority of Texas Board of Directors, effective August 11, 2009, for a term to expire August 11, 2015, Cliff A. Skiles, Jr. of Hereford (reappointment).

#### **Appointments for August 18, 2009**

Appointed to the Board of Pardons and Paroles, effective September 14, 2009, for a term to expire February 1, 2015, David Gutierrez of Lubbock (replacing Shanda Perkins).

#### **Appointments for August 19, 2009**

Appointed to the University of Houston System Board of Regents, effective August 31, 2009, for a term to expire August 31, 2015, Nandita Berry of Houston (replacing Calvin Stephens of Dallas whose term expired).

Appointed to the University of Houston System Board of Regents, effective August 31, 2009, for a term to expire August 31, 2015, Tilman J. Fertitta of Houston (replacing Dennis Golden of Carthage whose term expired).

Appointed to the University of Houston System Board of Regents, effective August 31, 2009, for a term to expire August 31, 2015, Jarvis V. Hollingsworth of Sugar Land (replacing Lynden Rose of Houston whose term expired).

Rick Perry, Governor

TRD-200903714



#### **Executive Order**

##### **RP 70**

*Relating to the American Recovery and Reinvestment Act of 2009 and federal funding for Texas*

WHEREAS, Texas strongly believes in accountable and transparent government; and

WHEREAS, Congressional enactment of the American Recovery and Reinvestment Act of 2009 (ARRA) will provide federal funding for Texas; and

WHEREAS, many Texas state agencies and institutions of higher education shall act as stewards and administrators of a large share of these funds; and

WHEREAS, federal guidelines with regard to expenditure of ARRA funds necessitate implementation of additional controls by state agencies and institutions of higher education; and

WHEREAS, the 81st Texas Legislature has placed certain requirements on state agencies relating to the expenditure and reporting of ARRA funds;

NOW THEREFORE, I, RICK PERRY, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas as the Chief Executive Officer, do hereby direct the following:

Goals. All state agencies and institutions of higher education that engage in the management and administration of ARRA funds are directed to:

- maintain transparency and accountability in all cases throughout the processes involving receipt, deployment, management, administration and reporting of ARRA funds; and
- develop strategies that maximize the use of ARRA funds without creating ongoing expenses to the state or localities after stimulus funds expire; and
- adhere to all federal and state statutes, rules and policies relating to ARRA and maintain current and proficient knowledge of them, including any training necessary to certify compliance with state and federal law.

Requirements. All state agencies and institutions of higher education that engage in the management and administration of ARRA funds are directed to:

- require that grant recipients and sub-recipients certify that ARRA funds will be used in accordance with state and federal laws as a condition of receiving funds; and
- require that grant recipients and sub-recipients track all ARRA funds and their projected statuses separately from all other funds, and comply with ARRA Section 1512 and other federal and state reporting requirements; and
- submit plans for expenditure of ARRA funds to the Legislative Budget Board and the Office of the Governor, as directed in Article XII of Senate Bill 1, the General Appropriations Act; and
- report all ARRA-related grant applications of state agencies and institutions of higher education to the Comptroller of Public Accounts, using a database created by that office.

Job Creation Numbers. In the absence of federal guidelines, the Texas Workforce Commission shall develop a methodology for agencies and institutions of higher education involved in the management and administration of ARRA funds to report job creation and retention numbers attributable solely to ARRA funds in a manner that neither inflates nor underreports those numbers.

Coordination and reporting. All state agencies and institutions of higher education that engage in the management and administration of ARRA funds are directed to:

- post all ARRA-funded job openings in state agencies and institutions of higher education on WorkinTexas.com and distinguish ARRA-funded positions from positions funded through other sources of revenue; and

- encourage all sub-recipients of ARRA funds to post all ARRA-funded job openings on WorkinTexas.com and distinguish ARRA-funded positions from positions funded through other sources of revenue; and

- report all job creation and retention resulting from the expenditure of ARRA funds to the Texas Workforce Commission; and

- designate responsible and qualified individuals as points of contact with the governor or his designee to maintain a flow of current information relating to the receipt, deployment, management and use of funds received by the state and any of its political subdivisions or contractors under ARRA; and

- confer regularly with the Office of the Governor and other appropriate state and federal entities regarding the use, management and administration of ARRA funds with the intent of establishing sound strategies, coordinated approaches and cooperative communication.

This executive order supersedes all previous orders on this matter that are in conflict or inconsistent with its terms and this order shall remain in effect and in full force until modified, amended, rescinded, or superseded by me or by a succeeding Governor.

Given under my hand this the 18th day of June, 2009.

Rick Perry, Governor

TRD-200903773



## Executive Order

### RP 71

*Relating to the content of the State's textbooks*

WHEREAS, the elected State Board of Education is entrusted with identifying the essential knowledge and skills for each foundation subject and ensuring they are incorporated into Texas public school textbooks; and

WHEREAS, authority is granted to the State Board of Education under the Texas Education Code to adopt or reject a textbook, regardless of the manner in which it is delivered, based on its coverage of the essential knowledge and skills and lack of factual errors; and

WHEREAS, questions have arisen upon the passage of House Bill No. 4294, Acts of the 81st Legislature, relating to the authority of the State Board of Education to review digital content through a process established by the Commissioner of Education, and changes must be made to clarify that the State Board of Education has the responsibility to review and approve content by the 82nd Legislature; and

WHEREAS, the process under which textbooks are approved needs to be focused on the content and ensuring it meets the standards and values adopted by the State Board of Education and not on the mechanism by which the information is delivered;

NOW THEREFORE, I, RICK PERRY, Governor of the State of Texas, by virtue of the power and authority vested in me by the Constitution and the laws of the State of Texas, do hereby order the following:

Cooperation. The Commissioner of Education and the Texas Education Agency shall continue to work together with the State Board of Education to ensure the content of the State's textbooks meet the essential knowledge and skills established by the State Board of Education and are factually error free.

Information and Opportunities. In establishing a review panel process of digital content, the Commissioner of Education shall adopt rules necessary to ensure the State Board of Education is an integral part of the digital content review process and include the following:

- The content review panel will consist of the State Board of Education members or their designees who have the expertise to comply with Sec. 31.0231, Education Code.
- The State Board of Education shall have the opportunity to review and present a recommendation to the Commissioner of Education before an electronic textbook is approved.
- If the State Board of Education has previously rejected an electronic textbook based upon its content, it cannot be placed on the Commissioner of Education's approved list.

This executive order supersedes all previous orders in conflict or inconsistent with its terms and shall remain in effect and in full force until modified, amended, rescinded, or superseded by me or by a succeeding Governor.

Given under my hand this the 19th day of June, 2009.

Rick Perry, Governor

TRD-200903774

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# THE ATTORNEY GENERAL

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The *Texas Register* publishes summaries of the following:  
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from  
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

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## Request for Opinion

**RQ-0815-GA**

### Requestor:

The Honorable Rene Oliveira

Chair, Committee on Ways & Means

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Whether the South Texas Water Authority may adopt an effective tax rate under the provisions of chapter 26 of the Tax Code (RQ-0815-GA)

### Briefs requested by September 21, 2009

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-200903756

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: August 25, 2009

## Opinion No. GA-0736

Major General Jose Mayorga

Adjutant General of Texas

Post Office Box 5218

Austin, Texas 78763-5218

Re: Whether the Adjutant General and the Assistant Adjutants General may accrue state compensatory leave (RQ-0796-GA)

### S U M M A R Y

The Texas Adjutant General is a single state officer who governs a state agency and is, therefore, precluded by subsection 659.024(c), Government Code, from accruing compensatory time. The same subsection does not preclude the Assistant Adjutants General from accruing compensatory time.

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-200903758

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: August 25, 2009

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Opinion

# EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 97. COMMUNICABLE DISEASES SUBCHAPTER B. IMMUNIZATION REQUIREMENTS IN TEXAS ELEMENTARY AND SECONDARY SCHOOLS AND INSTITUTIONS OF HIGHER EDUCATION

##### 25 TAC §97.73

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department) adopts, on an emergency basis, new §97.73 (relating to Provisional Enrollment in Texas Elementary and Secondary Schools for School Year 2009 - 2010). As authorized by Government Code, §2001.034, the Executive Commissioner may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the Executive Commissioner finds that an imminent peril to the public health, safety or welfare requires adoption of the rule on fewer than 30 days' notice. Emergency rules adopted under Government Code, §2001.034, may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

##### BACKGROUND AND PURPOSE

The rule of the department at §97.63 of this title (relating to Immunization Requirements in Texas Elementary and Secondary Schools) was amended in March 2009 to require three additional vaccinations for school entry for the 2009 - 2010 school year: meningococcal and tetanus/diphtheria/pertussis (Tdap) vaccines for Texas students entering 7th grade; and a second dose of varicella vaccine for students entering kindergarten and those entering 7th grade. Under this rule students may not enroll in school for 2009 - 2010 until they have received these age-appropriate immunizations, with very few, limited exceptions. A combination of factors has left many students unable to complete these vaccinations before August 24, 2009, the first day of public school for 2009 - 2010. Thousands of Texas students will not be able to begin school August 24, 2009, and will miss from days to weeks of education. If this occurred, this would adversely affect students' overall welfare and would put students at risk of being unsupervised. Preventing students from attending school deprives them of access to education, school-based health services, free and reduced cost lunches, and other public health programs provided through public and private schools. It also places hardships on working families by requiring them to provide childcare while the student is prevented from attending class, all of which creates an imminent peril to public health, safety, and welfare.

Under this emergency rule, students who are required to have, but have not yet received one or more of these three vaccinations may be provisionally enrolled in school through September 30, 2009. A student is not required to be vaccinated according to the schedule for the three vaccines until October 1, 2009. The schedule for one or more of the vaccines may be delayed beyond October 1, 2009, for good cause determined by the commissioner of the department.

This emergency rule will delay the following requirements relating to meningococcal, tetanus/diphtheria/pertussis, and varicella vaccines:

- (1) meningococcal vaccine;
- (2) tetanus/diphtheria/pertussis (Tdap) vaccines for Texas students entering 7th grade and boosters for students entering grades 8 - 12; and
- (3) varicella vaccine for students entering kindergarten and those entering 7th grade.

##### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

##### STATUTORY AUTHORITY

The new rule is adopted, on an emergency basis, under Government Code, §2001.034, relating to emergency rulemaking; Health and Safety Code, §81.004, which allows the department to adopt rules for the effective administration of the Communicable Disease and Prevention Act; §81.021 which requires the department to protect the public from communicable disease; §161.004 regarding statewide immunization of children; and Government Code, §531.0055, and Health and Safety Code, §1001.075. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice or hearing, or with an abbreviated notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice. Government Code, §531.0055, and Health and Safety Code, §1001.075, authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§97.73. Provisional Enrollment in Texas Elementary and Secondary Schools for School Year 2009 - 2010.

(a) This section establishes a special exception to §97.63 of this title (relating to Immunization Requirements in Texas Elementary and Secondary Schools) for the 2009 - 2010 elementary and secondary school year. A student may be provisionally enrolled in an elementary or secondary school without the following vaccines:



- (1) Tetanus/diphtheria/pertussis (Tdap);
- (2) Varicella; and
- (3) Meningococcal.

(b) The immunization schedule for the three vaccines listed in subsection (a) of this section is prescribed in §97.63(2)(B)(ii)(III), (v), and (vii) of this title (relating to Immunization Requirements in Texas Elementary and Secondary Schools). A student is not required to provide evidence of vaccination in accordance with the schedule for these three vaccines until October 1, 2009.

(c) A school nurse or school administrator must review the immunization status of a provisionally enrolled student to ensure compliance of the student by October 1, 2009, with the vaccination requirements for the three vaccines listed in subsection (a) of this section.

(d) The commissioner of the Department of State Health Services may postpone compliance with the immunization schedule for one or more of the three vaccines listed in subsection (a) of this section beyond October 1, 2009 in accordance with this subsection.

(1) If the commissioner determines good cause exists, the commissioner may extend the deadline for compliance with the immunization schedule for one or more 30-day periods. The commissioner must determine good cause exists for such extension.

(2) For purpose of this section, "good cause" means widespread or acute unavailability of a vaccine that prevents a substantial number of schoolchildren from obtaining such vaccinations, a state of disaster declared under Government Code, Chapter 418, or a public health emergency declared in accordance with federal law.

(3) The commissioner shall notify appropriate state and local health and school officials of the postponement of compliance authorized under this section. The commissioner also shall publish notice of a determination under this section in the *Texas Register* and other publications as determined by the commissioner.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 24, 2009.

TRD-200903725

Lisa Hernandez

General Counsel

Department of State Health Services

Effective Date: August 24, 2009

Expiration Date: December 21, 2009

For further information, please call: (512) 458-7111 x6972



## **TITLE 28. INSURANCE**

### **PART 1. TEXAS DEPARTMENT OF INSURANCE**

#### **CHAPTER 5. PROPERTY AND CASUALTY INSURANCE**

##### **SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION**

## **DIVISION 10. IMPLEMENTATION OF HOUSE BILL 4409**

### **28 TAC §5.4901**

The Commissioner of Insurance adopts on an emergency basis, to take immediate effect, new Division 10, §5.4901, establishing a period for interested persons to file written requests with the Commissioner for additional supporting information concerning the Texas Windstorm Insurance Association's (Association) 2009 annual proposed rate filing, under the Insurance Code §2210.352.

The rule is necessary to provide interested persons with a definite period in which to request information concerning the rate filing. The Association offers windstorm and hail insurance coverage (insurance coverage) in the designated catastrophe area which consists of the 14 Texas coastal counties and parts of Harris County. The catastrophe area is underserved for insurance coverage. The rate filing proposes the rates under which the Association will offer insurance coverage from the Association for the next year. The rates determine the cost of insurance from the Association for specific risks. Persons seeking coverage from the Association are unable to obtain comparable insurance coverage in the voluntary insurance market. Thus, persons who obtain coverage from the Association have few, if any, other sources from which they may obtain coverage. These persons have a substantial interest in ensuring that the premiums established as a result of the filing are fair and reasonable. Therefore, the Association's rates have a direct effect on the welfare of persons living and working in the designated catastrophe area, and the possible inability of such persons to obtain insurance coverage places them in imminent financial peril.

The Insurance Code §2210.352 requires the Association to make an annual rate filing. The Insurance Code §2210.354 authorizes interested persons to submit requests to the Commissioner for additional supporting information relating to the annual filing. Under §2210.354 the Commissioner would then forward these requests to the Association. Section 2210.354 was amended by House Bill (HB) 4409 (81st Legislature, Regular Session) to require the Commissioner to submit the requests for additional information to the Association within 21 days after the date the Department received the Association's annual rate filing. HB 4409 further amended §2210.354 to require persons to submit requests for additional information within a time period specified by the Commissioner. HB 4409 became effective on June 19, 2009. The Association's 2009 annual rate filing was received on August 17, 2009. The Department has not had sufficient time to adopt permanent rules concerning requests for additional supporting information regarding the Association's 2009 annual filing. Rules concerning such for the year 2009 must therefore be adopted on an emergency basis.

Based on the foregoing facts, the Commissioner has determined that persons living and working in the catastrophe area are entitled to request additional supporting information they believe is necessary to meaningfully comment on the Association's 2009 annual rate filing. This rule is necessary to provide interested persons with a definite period in which to request information concerning the rate filing. As a market of last resort, there is imminent peril to the welfare of persons in the catastrophe area if insurance coverage from the Association cannot be obtained. Therefore, it is necessary to adopt this section on an emergency basis.

Section 5.4901 establishes the period during which persons interested in the Association's 2009 annual rate filing may submit written requests to the Commissioner for additional supporting information from the Association. The Department has selected September 1, 2009, because it will provide persons approximately two weeks to submit their requests for additional information, while providing the Department with sufficient time to gather and deliver the requests to the Association.

STATUTORY AUTHORITY. Section 5.4901 is adopted under the Government Code §2001.034 and the Insurance Code §§2210.008, 2210.354 and 36.001. The Insurance Code §2210.008 authorizes the Commissioner to adopt rules in the manner prescribed in Subchapter A, Chapter 36, Insurance Code. The Insurance Code §2210.354 authorizes the Commissioner to adopt by rule a period for persons interested in the Association's annual filing to submit written requests for information. The Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of the state. The Government Code §2001.034 authorizes a state agency to adopt administrative rules on an emergency basis without prior notice and hearing under certain statutorily specified circumstances, including a finding that there is imminent peril to the public health, safety, or welfare.

§5.4901. Requests for Additional Supporting Information.

(a) Pursuant to the Insurance Code §2210.354 interested persons may file a written request with the Commissioner for additional supporting information related to the Texas Windstorm Insurance Association's 2009 annual rate filing.

(b) All written requests for additional supporting information must be submitted on or before September 1, 2009.

(c) The written request must be submitted to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, TX 78714-9104, with an additional copy of the request submitted to the Chief Actuary, P.O. Box 149104, MC 105-5F, Austin, TX 78714-9104.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 19, 2009.

TRD-200903654

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective Date: August 19, 2009

Expiration Date: December 16, 2009

For further information, please call: (512) 463-6327

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# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. “(No change)” indicates that existing rule text at this level will not be amended.

## TITLE 7. BANKING AND SECURITIES

### PART 2. TEXAS DEPARTMENT OF BANKING

#### CHAPTER 25. PREPAID FUNERAL CONTRACTS

##### SUBCHAPTER B. REGULATION OF LICENSES

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes the repeal of §25.17, concerning the Guaranty Fund; §25.18, concerning Definitions Applicable to §25.19 and §25.20; §25.19, concerning Notice of Seizure; the Bid Process; and §25.20, concerning Guaranty Fund Claims Filing Procedures and Eligibility for Payment Standards; and the simultaneous new §25.17, concerning the Guaranty Fund; §25.18, concerning Cancelled Permits; and §25.19, concerning Guaranty Fund Claims.

The new rules are proposed to update and conform the rules related to the Prepaid Funeral Guaranty Fund (the Fund) to new statutory provisions.

House Bill (HB) 3762, adopted by the 81st Texas Legislature in 2009, amended Subchapter H of Chapter 154 of the Finance Code to expand the Fund to cover insurance-funded prepaid funeral benefits contracts. The purpose of the Fund is to guarantee performance of covered prepaid funeral benefits contracts (contracts). Previously, the Fund applied only to trust-funded contracts. The new statutory provisions authorize the Fund to maintain separate accounts for trust-funded contract claims and insurance-funded contract claims. The new statutory provisions also expand the membership of the advisory council that supervises the operation and maintenance of the Fund and clarifies eligible claimants and uses of the Fund.

Proposed new §25.17 confirms the creation of the Fund and reestablishes the two-year terms of the appointed Guaranty Fund Advisory Council members. Assessments are expanded to apply to all sellers of prepaid funeral benefits rather than only trust-funded sellers and are to be paid with the seller's Renewal and Annual Report filing. Sellers of insurance-funded contracts will be assessed \$1 per contract until the insurance-funded account reaches \$1 million to create a fund that would guarantee the performance of insurance-funded contracts similar to the already existing fund that guarantees the performance of trust-funded contracts. The proposed new rule permits reimbursement from the fund for travel expenses incurred by the appointed members of the Guaranty Fund Advisory Council, which is required to meet at least once per year.

Proposed new §25.18 describes the process for selecting a person or entity to assume responsibilities when a permit to sell prepaid funeral benefits is cancelled. Proposed new §25.18(a) requires the department to notify the parties to contracts sold by a cancelled permit holder of the cancellation within 30 days. Proposed new §25.18(b) establishes an expanded bid list of those who wish to assume a cancelled permit holder's rights and obligations or who wish to provide administrative and record keeping services related to the cancelled permit holder's outstanding contracts. This expansion of the bid list facilitates the new uses of the Fund allowed by HB 3762.

Proposed new §25.18(c) requires the department to notify all persons and entities on the bid list of a permit cancellation within 60 days. In addition, all permit holders in the vicinity of the cancelled permit holder will be notified of the cancellation to provide them with the opportunity to bid on the right to assume the cancelled permit holder's obligations. If the cancelled permit is a trust-funded permit, funeral providers in the vicinity of the cancelled permit holder will also be notified. The proposed new rule sets out required content for the notice.

Proposed new §25.18(d) sets out facts that the commissioner is to consider in selecting a successor permit holder or a provider of administrative and record keeping services. Under proposed §25.18(e), the commissioner is responsible for the selection of the successful bidder, but the Guaranty Fund Advisory Council must approve any contract that obligates a payment from the Fund.

In the event all bids are rejected, proposed new §25.18(f) and (g) provide for new bid solicitation or continued management of the outstanding contracts by the department. If the cancelled permit was trust-funded, the balance of funds paid or to be paid on the contracts of the cancelled permit holder must be placed in the Fund if no successor permit holder is found. Further, proposed new §25.18(h) allows the department to employ persons to assist with the bid solicitation and selection process.

Proposed new §25.19 addresses claims against the Fund. Section 25.19(a) enumerates claims that are not eligible for payment from the Fund for jurisdictional reasons. Ineligible claims include claims based on events or losses that occurred prior to the establishment of the Fund for guarantee of performance of the type of contract involved. For example, claims based on a trust-funded contract purchased before the creation of the Fund in 1987 and claims based on insurance-funded contract losses that occurred before the effective date of HB 3762 are ineligible for payments. The Fund does not cover claims for contracts purchased from unauthorized sellers.

Proposed new §25.19(b) sets out what a claimant must file with the department to establish a claim against the Fund. Proposed new §25.19(c) allows the Guaranty Fund Advisory

Council to delegate to the commissioner authority to settle and determine claims against the Fund. Subsection (c) also provides that claimants may ask the Guaranty Fund Advisory Council to review a determination made by the commissioner on a claim against the Fund within 30 days of receipt of notice of the determination. After review, the Guaranty Fund Advisory Council may revise the commissioner's determination.

Stephanie Newberg, Deputy Commissioner of the Texas Department of Banking, has determined that for the first five-year period the proposed repeal and new rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal and new rules.

Ms. Newberg also has determined that, for each year of the first five years the repeal and new rules as proposed are in effect, the public benefit anticipated as a result of enforcing the repeal and new rules will be to make the rules related to the Prepaid Funeral Guaranty Fund consistent with the new provisions of the Finance Code. The new rules in conjunction with the statute provide parties to prepaid funeral benefits contracts with the procedure for asserting claims against the Fund and the bidding procedure for seeking to assume the rights and responsibilities of a cancelled permit holder.

For each year of the first five years that the repeal and new rules will be in effect, there will be no economic costs to persons required to comply with the repeal and new rules as proposed.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed repeal and new sections must be submitted no later than 5:00 p.m. on October 5, 2009. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by e-mail to legal@banking.state.tx.us.

## 7 TAC §§25.17 - 25.20

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Banking or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under Finance Code, §154.051, which authorizes the Finance Commission to adopt reasonable rules relating to the enforcement and administration of Chapter 154; Finance Code §154.111, which authorizes the Finance Commission to adopt rules governing the selection of successor permit holders for the sell of prepaid funeral benefits; and §154.351, which allows the Finance Commission to by rule establish and the department to maintain a fund to guarantee performance by sellers of prepaid funeral benefits contracts of their obligations to the purchasers.

Finance Code, Chapter 154, Subchapter H is affected by the proposed repeal of these sections.

§25.17. *Guaranty Fund.*

§25.18. *Definitions Applicable to §25.19 and §25.20.*

§25.19. *Notice of Seizure; the Bid Process.*

§25.20. *Guaranty Fund Claims Filing Procedures and Eligibility for Payment Standards.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2009.

TRD-200903667

A. Kaylene Ray

General Counsel

Texas Department of Banking

Proposed date of adoption: October 16, 2009

For further information, please call: (512) 475-1300

## 7 TAC §§25.17 - 25.19

The new sections are proposed under Finance Code, §154.051, which authorizes the Finance Commission to adopt reasonable rules relating to the enforcement and administration of Chapter 154; Finance Code §154.111, which authorizes the Finance Commission to adopt rules governing the selection of successor permit holders for the sell of prepaid funeral benefits; and §154.351, which allows the Finance Commission to by rule establish and the department to maintain a fund to guarantee performance by sellers of prepaid funeral benefits contracts of their obligations to the purchasers.

Finance Code, Chapter 154, Subchapter H is affected by the proposed new sections.

§25.17. *Guaranty Fund.*

(a) Fund established. Pursuant to Finance Code Chapter 154, Subchapter H, a guaranty fund is established to guarantee performance by sellers of prepaid funeral services. The fund is named the Prepaid Funeral Guaranty Fund, and is supervised by an advisory council composed of members as set out in Finance Code §154.355.

(b) Advisory Council. The advisory council is named the Guaranty Fund Advisory Council. The consumer representative and the insurance-funded industry representative serve a two-year term beginning on January 1 of an even-numbered year and ending December 31 of the following odd-numbered year. The trust-funded industry representative serves a two-year term beginning on January 1 of an odd-numbered year and ending December 31 of the following even-numbered year. The banking commissioner or the commissioner's official designee serves as the chairperson of the council.

(c) Assessments. The department shall make and collect assessments from all sellers of prepaid funeral benefits pursuant to Finance Code Chapter 154, Subchapter H. Each seller shall remit the amount of its calculated assessment to the department each year with its Renewal and Annual Report filing.

(d) Expenses. The commissioner may use any earnings from the Prepaid Funeral Guaranty Fund for reimbursement of travel expenses incurred by the industry and the consumer representatives of the Guaranty Fund Advisory Council pursuant to the travel guidelines applicable to state employees, and for the expenses of providing any other legislatively mandated action with respect to the Prepaid Funeral Guaranty Fund, including but not limited to audits.

(e) Meetings. The Guaranty Fund Advisory Council shall meet on a periodic basis as determined by the commissioner in order to fulfill the requirements of supervising the operation and maintenance of the Prepaid Funeral Guaranty Fund. However, in no event shall the advisory council fail to meet at least once annually.

§25.18. *Cancelled Permits.*

(a) Notice. Within 30 days of cancellation of a permit to sell prepaid funeral benefits, the department shall notify the parties to the contracts sold by the cancelled permit holder of the cancellation. The notice shall provide information regarding the purchaser's options, the

Prepaid Funeral Guaranty Fund, and the process for seeking a successor permit holder.

(b) Bid list. The department shall maintain a bid list of entities that wish to:

(1) bid for the right to assume a cancelled trust-funded permit holder's obligations under prepaid funeral contracts and the right to receive the balance of prepaid funeral funds paid or to be paid under those contracts; or

(2) bid for the right to assume a cancelled insurance-funded permit holder's obligations under prepaid funeral contracts; or

(3) bid to provide administrative and record keeping services related to a cancelled permit holder's outstanding prepaid funeral contracts.

(c) Solicitation of bids. On or before the 60th day after the date of cancellation of a permit to sell prepaid funeral benefits, the department shall notify those on the bid list and all permit holders in the vicinity of the cancelled permit holder of the cancellation. If the cancelled permit is trust-funded, the department shall additionally notify all funeral providers in the vicinity of the canceled permit holder of the cancellation. The commissioner shall have the discretion to combine or group contracts for bidding and sale purposes. The notice must include:

(1) the name and address of the cancelled permit holder;

(2) the number and aggregate dollar amount of unperformed prepaid funeral contracts;

(3) the balance of unearned prepaid funeral funds in trust or the value of insurance policies related to unperformed prepaid funeral contracts;

(4) the date by which sealed bid proposals must be submitted to the department to be considered for the bid award;

(5) instructions as to how eligible potential bidders may inspect the cancelled permit holder's prepaid funeral contract records; and

(6) a statement that, with the exception of bids to provide administrative and record keeping services, all successful bidders must have or obtain an appropriate permit to sell prepaid funeral contracts in Texas.

(d) Selection considerations. After the deadline has expired for submitting sealed bids, the commissioner may select a successor to the cancelled permit holder or may select a provider of administration and record keeping services in a situation where no acceptable successor permit holder is found.

(1) If the bidder is a permit holder, the commissioner shall consider:

(A) whether the bidder has demonstrated an ability to properly manage, maintain, and account for its own prepaid funeral funds;

(B) whether the bidder has properly remedied violations of law cited by the department in its examination reports;

(C) whether the bidder has a history of repeated or continuous violations;

(D) whether the bidder has the ability to fulfill the terms of the prepaid funeral contract;

(E) whether the bidder poses any other significant regulatory concern;

(F) the current or potential claim against the Prepaid Funeral Guaranty Fund; and

(G) any other relevant information.

(2) If the bidder is a non-permit holder funeral provider, the commissioner shall consider, to the extent applicable, all of the factors listed in paragraph (1) of this subsection, as applicable, and the following:

(A) the bidder's general reputation in the community where it is located;

(B) whether the bidder's business ability, experience, character, and general fitness warrant the confidence of the public;

(C) any state or federal law enforcement, administrative, or other action taken against the bidder; and

(D) the bidder's willingness to obtain a permit from the commissioner to sell prepaid funeral benefits in the State of Texas and to abide by the statutes and rules governing such permits.

(3) If the bidder is a provider of administration and record keeping services, the commissioner shall consider the following:

(A) the bidder's business experience and knowledge of Chapter 154 of the Finance Code;

(B) the bidder's financial capacity;

(C) the bidder's fee structure and its effect on the Prepaid Funeral Guaranty Fund;

(D) the bidder's general reputation;

(E) whether the bidder's business ability, experience, character, and general fitness warrant the confidence of the public;

(F) any state or federal regulatory or law enforcement, administrative, or other action taken against the bidder; and

(G) any other relevant information.

(e) Selection of successor. The commissioner alone shall be responsible for the selection of a successor permit holder or service provider under this section. However, the commissioner shall make no contract that obligates the Prepaid Funeral Guaranty Fund unless approved by the Guaranty Fund Advisory Council.

(f) Rejection of bids. The commissioner may reject all bid proposals received pursuant to this section.

(1) If all bids for a cancelled trust-funded permit are rejected, a new bid proposal may be solicited or, alternatively, the balance of trust-funded prepaid funeral funds paid or to be paid under the contracts of the cancelled permit holder shall be placed in the Prepaid Funeral Guaranty Fund for management by the Guaranty Fund Advisory Council. The department shall manage the prepaid funeral contracts; provided, however, that the commissioner may thereafter solicit additional bid proposals under subsection (d) of this section.

(2) If all bids for a cancelled insurance-funded permit are rejected, a new bid proposal may be solicited or, alternatively, the department shall manage the prepaid funeral contracts; provided, however, that the commissioner may thereafter solicit additional bid proposals under subsection (d) of this section.

(g) Additional solicitation of bids. The department may from time to time solicit bids on prepaid funeral contracts from a cancelled permit for which no bids were accepted or received as a result of the original or any subsequent bid solicitations.

(h) Employment of persons to assist. The department may, with the approval of the Guaranty Fund Advisory Council, employ persons to assist with the bid solicitation and selection process as needed.

§25.19. Guaranty Fund Claims.

(a) Claims not eligible. In addition to claims excluded under Finance Code §154.359, the following claims are not eligible for payment from the Prepaid Funeral Guaranty Fund:

(1) a claim based on a trust-funded prepaid funeral benefits contract that was purchased prior to August 31, 1987;

(2) a claim based on a prepaid funeral benefits contract purchased from a contract seller that did not hold a permit to sell prepaid funeral benefits at the time of sale;

(3) a claim based on a prepaid funeral benefits contract purchased under a plan that does not pay assessments to the guaranty fund, such as the plan litigated in *Sexton v. Mount Olivet Cemetery Association*, 720 S.W. 2d 129 (Tex. App.-Austin 1986, no writ) (specifically including, but not limited to, any prepaid funeral benefits purchased from Mount Olivet Cemetery Association);

(4) a claim under an insurance-funded prepaid funeral contract for a loss arising from or relating to the occurrence of one of the following events before September 1, 2009:

(A) default under the contract;

(B) the suspension, revocation, or refusal to renew the permit of the contract seller under Chapter 154 of the Finance Code; or

(C) the bankruptcy, receivership, seizure, or other failure of the contract seller.

(b) Claimant's filings. A claimant shall file with the department a completed claim form prescribed by the department together with the following documents and information:

(1) a copy of the prepaid funeral contract and any amendments thereto;

(2) evidence of the amount paid on the prepaid funeral contract;

(3) a copy of a certified copy of the death certificate for the contract beneficiary, if applicable;

(4) if the claimant is not the purchaser of the contract, evidence of the claimant's authority to file a claim and receive any funds awarded;

(5) if claimant is acting for the benefit of a group of purchasers as part of a plan to arrange for a successor permit holder, a copy of the plan;

(6) a statement setting forth any special circumstances that may bear on the claim; and

(7) other information that may be pertinent to the claim that is requested by the department.

(c) Claims review process.

(1) The Guaranty Fund Advisory Council may delegate to the commissioner the authority to settle and determine claims against the Prepaid Funeral Guaranty Fund up to such amount and with such restrictions as the council may from time to time determine.

(2) A claimant may request that the Guaranty Fund Advisory Council review a determination by the commissioner regarding a claim against the Prepaid Funeral Guaranty Fund by submitting a request for review of the action to the Guaranty Fund Advisory Council within 30 days of receipt of notice of the commissioner's action. Such

request shall be addressed to the Guaranty Fund Advisory Council in care of the commissioner and filed with the commissioner on or before the close of business on the last day of the 30-day period. The Guaranty Fund Advisory Council shall review and may revise the commissioner's determination.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2009.

TRD-200903666

A. Kaylene Ray

General Counsel

Texas Department of Banking

Proposed date of adoption: October 16, 2009

For further information, please call: (512) 475-1300

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**7 TAC §25.23**

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes amendments to §25.23, concerning application and renewal fees.

Section 25.23 establishes the application and renewal fees a person must pay to the department to obtain and maintain a license to sell prepaid funeral benefits contracts (prepaid contracts) under Finance Code, Chapter 154 (Chapter 154). The rule is amended to make the rule consistent with new provisions in Finance Code, Chapter 154.

Current §25.23(b)(3) allows a permit holder to request a one-year reduction in its renewal fee if it can demonstrate that it is temporarily insolvent or if payment of the full renewal fee will cause it to become temporarily insolvent and the permit holder reasonably expects to be able to pay the full renewal fee in three years.

House Bill 3762, 81st Texas Legislature, 2009, added a provision to Finance Code §154.109(b) that allows the commissioner to deny renewal of a permit if the permit holder's financial condition does not warrant the public's confidence. The addition of this new criteria for renewal of a permit to sell prepaid funeral benefits contracts conflicts with the provisions of §25.23(b)(3), which would allow renewal of a permit even if the permit holder was in an insolvent condition. Therefore, §25.23(b)(3) is proposed to be deleted to eliminate the inconsistency.

Deletion of §25.23(b)(3) eliminates the need for the definition of "financially insolvent" contained in §25.23(a)(2) and therefore, that definition is proposed to be deleted.

Stephanie Newberg, Deputy Commissioner of the Texas Department of Banking, has determined that for the first five-year period that the proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Newberg has also determined that, for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the proposed amendments will be to make §25.23 consistent with the new provisions of the Finance Code.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply

with the rule as proposed. Any effect on permit holders that might have been eligible for a renewal fee reduction under §25.23(b)(3) is the result of statutory change and not a result of the amendment of this rule.

There will be no adverse economic effect on small business or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amendments must be submitted no later than 5:00 p.m. on October 5, 2009. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@banking.state.tx.us.

The amendments are proposed under the authority of Finance Code, §154.051, which allows the Finance Commission to adopt reasonable rules relating to the enforcement and administration of Chapter 154; and §154.109, which establishes reasons for cancellation, suspension, or non-renewal of a permit to sale prepaid funeral benefits contracts.

Finance Code, §154.109, is affected by the proposed amendments.

#### *§25.23. Application and Renewal Fees.*

##### (a) Definitions.

###### (1) (No change.)

###### ~~{(2) Financially insolvent--}~~

~~{(A) The inability to pay debts as they mature or pay obligations as they become due and payable; or}~~

~~{(B) having debts in excess of assets.}~~

(2) ~~{(3)}~~ You, Your or I--A person having a valid permit to sell prepaid funeral benefit contracts issued by the Department under §154.101 of the Finance Code, except that, for purposes of subsection (b)(1) of this section, "you," "your," or "I" means an applicant for a new prepaid funeral benefits permit.

(b) Application fees. The application fees set forth in this subsection have been set in accordance with the Finance Code, Chapter 154, for the purpose of defraying the cost of administering the Finance Code, Chapter 154. Except as otherwise provided in this subsection, all fees are due at the time the application is filed and are nonrefundable. An application submitted without the appropriate filing fee will be deemed incomplete and will not be considered.

###### (1) - (2) (No change.)

~~{(3) If you are experiencing financial difficulties, you may be able to obtain a one-year reduction in the amount of your renewal fee. To request a one-year reduction in the renewal fee, you must file a written application as described in subparagraph (A) of this paragraph and the commissioner must find that the application satisfies the requirements described in subparagraph (B) of this paragraph. The commissioner has discretion to decide whether to reduce your renewal fee and to decide the amount of any reduction.}~~

~~{(A) To request a one-year reduction in the renewal fee, you must:}~~

~~{(i) not later than the date the current renewal fee is due, file with the department a written application accompanied by a written business recovery plan and other supporting documentation sufficient to demonstrate that you satisfy each factor described in subparagraph (B) of this paragraph; and}~~

~~{(ii) file any additional documentation the department requests not later than the seventh day after the date you receive the request.}~~

~~{(B) The commissioner will not grant you a one-year reduction of the renewal fee unless the commissioner finds, based on the application and supporting documentation, that:}~~

~~{(i) you are financially insolvent or payment of the full renewal fee will cause you to become financially insolvent, and your current or impending financial insolvency is temporary; and}~~

~~{(ii) you reasonably expect to have the ability to pay the renewal fee in full by at least the third year after the year in which the request is made, based on a written business recovery plan that is reasonable and attainable.}~~

(3) ~~{(4)}~~ Conversion application fee. If you apply to convert a trust-funded prepaid funeral benefits operation to an insurance-funded prepaid funeral benefits operation, you must pay a \$1,000 fee per application. In the event additional processing time is required because the application is incomplete, you must pay the additional processing costs incurred in excess of the filing fee originally submitted, at the rate of \$600 per eight-hour employee day, provided that the total fee cannot exceed \$2,000. Until you have paid any such additional fee, the application will be deemed incomplete and will not be considered.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2009.

TRD-200903668

A. Kaylene Ray

General Counsel

Texas Department of Banking

Proposed date of adoption: October 16, 2009

For further information, please call: (512) 475-1300



## PART 4. TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

### CHAPTER 80. MORTGAGE BROKER AND LOAN OFFICER LICENSING

The Finance Commission of Texas (Finance Commission) proposes to amend the following sections of 7 TAC Chapter 80, concerning Mortgage Broker and Loan Officer Licensing: §80.1, Scope; §80.2, Definitions; §80.3, Licensing - General; §80.4, Qualifications for Obtaining Licenses; §80.5, Renewals; §80.6, Sponsorship and Termination Thereof; §80.7, Background Checks; §80.12, Display of License Verification; License Record Changes; §80.13, Books and Records; §80.15, Complaints, Administrative Penalties, and Disciplinary and/or Enforcement Actions; and §80.20, Inspections. These amendments are proposed in order to implement the provisions of House Bill 963 and House Bill 2774 as passed by the 81st Texas Legislature, as well as a previous legislative session change to Chapter 55, Texas Occupations Code. These bills make substantial modifications to the Mortgage Broker License Act, Finance Code Chapter 156 relating to the licensing and regulation of mortgage brokers.

The proposal to amend §80.1, concerning Scope, reflects the departments intention to participate in the Nationwide Mortgage Licensing System and Registry (NMLSR) as required by the federally mandated Secure and Fair Enforcement Licensing Act of 2008 (SAFE), and enacted by House Bill 10 in Texas. In addition, the proposed amendment expands the definition for the mortgage banker exemption to state that to be exempt the mortgage banker the company must be registered under Chapter 157, Finance Code.

The proposed amendment to §80.2, concerning Definitions, adds the more familiar acronyms associated with the quasi-federal government sponsored enterprises which are Fannie Mae, Freddie Mac, and Ginnie Mae.

The proposed amendment to §80.3, concerning Licensing - General, and eliminates the requirement for a holder of a provisional license to display the license.

The proposed amendment to §80.4, concerning Qualifications for Obtaining Licenses, updates the references to insurance agent titles as defined by the Texas Insurance Code. It also changes the requirements for a mortgage broker and an entity mortgage broker license by indicating finance requirements are met solely by participation in the Mortgage Broker Recovery Fund, and allows an active mortgage broker license holder to convert to a loan officer license without additional pre-licensing education or proof of experience.

The proposal to amend §80.5, concerning Renewals, adds language pursuant to Chapter 57, Texas Education Code, that a licensing agency cannot renew a license if the licensee is in default on a student loan administered by the Texas Guaranteed Student Loan Corporation. In addition, the proposed amendment adds language pursuant to Chapter 55, Texas Occupations Code, which exempts licensees on active military duty from late filing penalties and allows additional time to complete continuing education requirements.

The proposed amendment to §80.6, concerning Sponsorship and Termination Thereof, eliminates the requirement of a loan officer's sponsoring mortgage broker to display the license.

The proposed amendment to §80.7, concerning Background Checks, implements House Bill 963 which amended Chapter 55, Texas Occupations Code, by providing a means for a potential applicant to request a determination of eligibility relating to the effect a criminal history may have on the approval of a mortgage broker or loan officer license.

The proposed amendment to §80.12, concerning Display of License Verification; License Record Changes, amends the title of the section and references to the display of license verifications.

The proposal to amend §80.13, concerning Books and Records, eliminates the language that requires the mortgage broker to maintain records relating to the maintenance of any surety bond; the requirement for a surety bond has been eliminated by the enactment of House Bill 2774.

The proposed amendment to §80.15, concerning Complaints, Administrative Penalties, and Disciplinary and/or Enforcement Actions, amends the language to include the addition of an administrative claim as a method to receive payment from the Mortgage Broker Recovery Fund; adds language to indicate the commissioner may collect a fee for the handling of a returned check or credit card charge back; clarifies that a licensee receives a notice and opportunity for hearing regarding the imposition of administrative penalties; and eliminates language that states any

penalty collected must be deposited in the Mortgage Broker Recovery Fund. In addition it adds language that the commissioner may order disciplinary action against a license holder if he becomes aware of any fact that had it been known prior to the issuance of a license it may have resulted in the denial of a license.

The proposed amendment to §80.20, concerning Inspections, adds language that the commissioner may require reimbursement for a mortgage broker examination if the records are located out of state or if the review is considered beyond the routine examination process.

The Act establishes a Mortgage Broker Advisory Committee to advise the commissioner and the Finance Commission on the promulgation of forms and regulations, and the implementation of the Act. The advisory committee members were provided copies of the proposed rule changes on June 30, 2009, and comments from all members were received back via electronic mail. No member objected to the publication of the rule changes for comments.

Douglas B. Foster, Commissioner of the Department of Savings and Mortgage Lending, has determined that for the first five-year period that the amended sections, as proposed, will be in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering these sections, and they will add equal amounts of revenue and costs to the department.

Mr. Foster estimates that for the first five years the proposed amended sections are in effect, the public will benefit by adding the provision for administrative claims in addition to the current court judgments as a means for a consumer to reach the Mortgage Broker Recovery Fund. The public will no longer be required to retain an attorney and negotiate the complicated, expensive and lengthy civil legal process to obtain relief. The economic effect on small or micro businesses will be negligible.

Comments on the proposed amendments may be submitted in writing to Douglas B. Foster, Commissioner, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705 or e-mailed to [smlinfo@sml.state.tx.us](mailto:smlinfo@sml.state.tx.us), no later than 30 days from the date these proposed amendments are published in the *Texas Register*.

## SUBCHAPTER A. LICENSING

### 7 TAC §§80.1 - 80.7

The amendments are proposed under Finance Code §11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under Finance Code, §156.102(a) and (b), which authorize the Commissioner of the Texas Department of Savings and Mortgage Lending, subject to review and compliance with the directives of the Finance Commission, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

The section of the Act affected by the proposed amendments is Finance Code, §156.102(a) relating to authority for the Finance Commission to adopt rules to implement the intended purpose of the Act or to enforce the Act. The proposed amendments relate to the following sections of the Finance Code: §§156.203, 156.204, 156.205, 156.208, 156.212, 156.301, 156.302, 156.303, and 156.506.

#### §80.1. Scope.

This chapter [Chapter] governs the licensing and conduct of Mortgage Brokers, and the Loan Officers working for them, under the Act. During the department's transition to the Nationwide Mortgage Licensing



System and Registry (NMLSR), the terms "mortgage broker," "loan officer," and "residential mortgage loan originator" may be used interchangeably, and some definitions, terms, and processes may be modified to conform to the NMLSR.

(1) As used herein the term "Mortgage Broker" means a person who receives an application from a prospective borrower to attempt to obtain a Mortgage Loan. A person is a "Mortgage Broker" even if the person is not exclusively engaged in the activities of a Mortgage Broker.

(2) As used herein, the term "Loan Officer" means an individual required to be sponsored by a licensed Mortgage Broker for the purposes of performing the acts of a Mortgage Broker.

(3) The terms Mortgage Broker and Loan Officer do not include:

(A) An individual who performs only clerical functions in connection with the obtaining, compiling, or delivery of an application for a Mortgage Loan; or

(B) An individual functioning solely as a Mortgage Loan processor performing those duties listed in Finance Code §156.002(6).

(4) A person is required to be licensed under the Act if:

(A) The person, acting alone or in concert with others, receives a mortgage loan application and performs any one of the following activities:

(i) Advises a prospective borrower about the different type of loan products available, or advises a prospective borrower how closing costs and monthly payments could vary under each product; or

(ii) Consults or discusses with a prospective borrower about the maximum amount of the mortgage a prospective borrower can afford; or

(iii) Provides disclosures to a prospective borrower or discusses or explains such disclosures. Disclosures include but are not limited to the mortgage broker disclosure form; truth in lending disclosures, the good faith estimate of settlement costs, affiliated business arrangements; and disclosures relating to the dual role as mortgage broker and loan officer and real estate broker or sales agent. An individual who prepares a required disclosure under the direction and supervision of a licensed loan officer or licensed mortgage broker, but who does not discuss the disclosure with a prospective borrower shall not be deemed to have provided a disclosure for purposes of this clause [subsection]; or

(iv) Determines the lender(s) or investor(s) to whom the loan will be submitted; or

(v) Issues or signs a prequalification letter or preapproval letter; or

(B) The [the] individual represents or holds himself out as a "loan officer," "mortgage consultant," or "mortgage broker," or otherwise represents that the person is engaging in or conducting the business of originating mortgage loans.

(5) An individual who is a licensed real estate agent or real estate broker, and who only provides general information relating to activities described in paragraph (4)(A)(i) and [(4)(A)](ii) is not required to be licensed provided that such individual receives no additional compensation for providing such services.

(6) Exemptions.

(A) The following business entities are exempt from the Act and this chapter [Chapter], and the Employees, as defined in paragraph (11) of §80.2 of this chapter [Chapter] (relating to Definitions), of such entities are also exempt from the Act and this chapter [Chapter] to the extent they are working for the benefit of their employer:

(i) a bank, savings bank, or savings association and any subsidiary or affiliate of any of the foregoing;

(ii) a state or federal credit union;

(iii) an insurance company licensed or authorized to do business in the State of Texas;

(iv) a Mortgage Banker registered or licensed under Chapter 157, Finance Code; or

(v) an organization that qualifies for an exemption from state franchise and sales taxes by virtue of its status under §501(c)(3) of the Internal Revenue Code, as amended.

(vi) An [an] individual who is an exclusive agent of a registered financial services company under a written agreement prohibiting the individual from soliciting, processing, negotiating, or placing a mortgage loan with a person other than the registered financial services company or an affiliate of that company.

(vii) An Employee is presumed to be working for the benefit of his or her employer with respect to a Mortgage Loan if when the Mortgage Loan is made it is closed at the direction of the employer or the employer directly shares in the economic gain or loss of the Mortgage Loan transaction.

(B) The following persons are exempt from the Act and this chapter [Chapter]:

(i) an individual who makes a Mortgage Loan from the individual's own funds to a spouse, former spouse, or person or persons in the lineal line of consanguinity of the person making such Mortgage Loan;

(ii) an owner of real property who in any 12-consecutive-month period makes no more than five Mortgage Loans to purchasers of the real property for all or a part of the purchase price of that same real property; or

(iii) an individual who makes a Mortgage Loan from that individual's own funds who is not and is not required, by virtue of his or her business, to be an authorized lender under Chapter 342, Finance Code, and does not regularly engage in the business of making or brokering Mortgage Loans. For purposes of this clause [subsection], a person is deemed to be regularly engaging in the business of making or brokering Mortgage Loans if that person:

(I) advertises or holds himself out to be engaged in the business of making or brokering mortgage loans; or

(II) originates or brokers more than one mortgage loan in any one calendar quarter.

#### §80.2. Definitions.

As used in this chapter [Chapter], the following terms have the meanings indicated:

(1) "Commissioner" means the Commissioner of the Department of Savings and Mortgage Lending.

(2) "Commissioner's designee" means an employee of the Department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in the Act.

(3) "Commission" means the Finance Commission of the State of Texas.

(4) "Department" means the Department of Savings and Mortgage Lending.

(5) "Mortgage Loan" means any indebtedness secured by a lien against, or security interest in, one-to-four family residential real property when the property is intended to be occupied for residential purposes whether or not the property is acquired for investment purposes or acquired for owner occupancy. It includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a one-to-four family residence, but is used for a commercial purpose such as a professional office, beauty salon, or other non-residential use, and is not used as a residence.

(6) "One-to-four family residential real property" means improved or unimproved real property, or any portion of or interest in any such real property, on which a one-to-four family dwelling, including a manufactured home, is, is being or is to be constructed or situated.

(7) "Mortgage Banker" means a person who is:

(A) approved or authorized by the United States Department of Housing and Urban Development as a mortgagee, for Mortgage Loans as defined in this chapter [Chapter], with unconditional direct endorsement underwriting authority;

(B) an approved seller or servicer under the Federal National Mortgage Association (Fannie Mae);

(C) an approved seller or servicer under the Federal Home Loan Mortgage Corporation (Freddie Mac); or

(D) an approved issuer for the Government National Mortgage Association (Ginnie Mae).

(8) "Mortgage Applicant" means any person who is solicited to use or uses a Mortgage Broker, directly or through a Mortgage Broker's Loan Officer, to obtain a Mortgage Loan.

(9) "Physical Office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting Mortgage Loan applications is conducted. It must have a street address. A post office box or other similar designation will not suffice. It must be accessible to the general public as a place of business and must hold itself open on a regular basis during posted hours. The posted hours of business must be posted in a manner to give effective notice to walk-up traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or building, the hours may be posted in a common lobby or reception area. During the hours in which the physical office is open, at least one staff member must be present to assist customers. The physical office of a Mortgage Broker or a Loan Officer need not be the location at which such person's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for inspection during normal business hours.

(10) "Branch office" means any location at which a Mortgage Broker, acting directly or through one or more Loan Officers, solicits or receives applications for Mortgage Loans. A branch office includes any location at which a Mortgage Broker (or a Loan Officer acting on behalf of a Mortgage Officer) owns, leases, operates, maintains, or staffs a computer or other similar electronic device by means of which a consumer may make application for a Mortgage Loan.

(11) "Employee" means, with respect to an individual working for a business entity, any individual whom the business entity has elected to treat as an employee for federal income tax and FICA withholding purposes.

(12) "Recovery Fund" means the Mortgage Broker Recovery Fund established and administered in accordance with Subchapter F of the Act.

(13) "Criminal Offense" means any violation of any state or federal criminal statute which:

(A) involves theft, misappropriation, or misapplication, of monies or goods in any amount;

(B) involves the falsification of records, perjury, or other similar criminal offenses indicating dishonesty;

(C) involves the solicitation of, the giving of, or the taking of bribes, kickbacks, or other illegal compensation;

(D) involves deceiving the public by means of swindling, false advertising or the like;

(E) involves acts of moral turpitude and violation of duties owed to the public including, but not limited to, the unlawful manufacture, distribution, or trafficking in a controlled substance, dangerous drug, or marijuana;

(F) involves acts of violence or use of a deadly weapon;

(G) when considered in connection with several other violations committed by the same person over a period of time forms part of a pattern showing a lack of respect for, disregard for, or, apparent inability to follow, the criminal law; or

(H) involves any other crime which the Commissioner determines has a reasonable relationship to whether a person is fit to serve as a Mortgage Broker or Loan Officer in a manner consistent with the purposes of the Act and the best interest of the State of Texas and its residents.

#### *§80.3. Licensing - General.*

(a) Applications for a Mortgage Broker license or Loan Officer license must be submitted on the current application forms promulgated by the Commissioner from time to time. Current application forms will be made available on the Department's website in a format which can be downloaded and printed. An application, notice, or any other filing with the Department will only be deemed submitted if it is complete. A filing is complete only if all required supporting documentation is included and only if all required fees have been received by the Department. If an applicant fails to provide to the Department any information or supplemental documentation within 30 days from the date of request, the application may be deemed withdrawn. Except as otherwise specifically provided in these rules, a Mortgage Broker license or Loan Officer license shall be valid for a term [period] of not more than two years from the date of issuance.

#### *(b) Provisional Licenses*

(1) If the Commissioner determines that the completion of an application for a license required by the Act will be delayed significantly due to the need for additional information to render the application complete and the Commissioner has determined that there is no reason to believe, based on the facts and circumstances known, that the application will be denied, the Commissioner may, in his or her sole discretion, issue a provisional license. A provisional license issued under this paragraph:

(A) may contain such limitations and restrictions as the Commissioner determines are reasonably necessary or appropriate to further the purposes of the Act;

(B) is subject to revocation for any of the grounds set forth in §156.303 of the Act; and

(C) is subject to revocation if the Commissioner determines that any facts or circumstances exist which would have constituted grounds for denial of the application.

(2) If an applicant for a loan officer license has been employed as a loan officer for at least 18 months of the 20 months immediately preceding the date of the application by a person exempt from the Act under §156.202, the applicant may be granted a 90 day provisional license as provided in this subsection [subdivision]:

(A) The applicant must meet the qualifications for a loan officer license, other than the educational and examination requirements.

(B) The applicant must pay a non-refundable \$100 expedited processing fee in addition to the fee for regular license.

(C) No extension of the provisional license will be granted. Unless the applicant has met all of the requirements for a regular license, including the educational and testing requirements, and the license has been issued, the provisional license will expire at the end of the 90 day period.

(D) The Commissioner shall use best efforts to issue the provisional loan officer license on or before the later of:

(i) the 10th business day after the date of receipt of a completed application; or

(ii) the second business day after the date of receipt of the criminal background information required under §156.206 of the Act, demonstrating that the applicant has no pending criminal charges and has not been convicted of a criminal offense. A person is considered convicted as provided by §156.204(d) of the Act.

(E) The Commissioner may revoke a provisional loan officer license if the Commissioner discovers that the applicant has made a misrepresentation relating to the applicant's qualifications for a loan officer license, has violated this chapter, or does not meet the qualifications for a provisional loan officer license. The revocation of a provisional loan officer license is not subject to appeal.

(3) The holder of a provisional license shall be required, while operating under such provisional license, to comply with all requirements of the Act as if he or she were the holder of a license~~;~~ including, but not limited to, display of his or her provisional license.

#### (c) Inactive Licenses

(1) New loan officer applicants. A loan officer applicant may be issued an inactive license if the applicant completes the promulgated application form and complies with all requirements of the license with the exception of having an active mortgage broker sponsor. The license can be converted to an active license within the license period following the submission and processing of information regarding an active mortgage broker sponsor. If the inactive license is not renewed within the statutory timeframes, the license will expire.

(2) Renewing loan officer licensees. A loan officer may renew his/her license while inactive and may either provide sponsorship information to convert the license to an active license or may continue to be licensed as "inactive."

(3) Mortgage broker licensees. A mortgage broker may place his/her license inactive at any time during the license period. The

license will remain inactive until the mortgage broker notifies the department in writing to convert the license to an active license or until the license expires. While in an inactive status, a mortgage broker must continue to meet the statutory requirements of the license including, but not limited to, meeting financial requirements, filing of annual reports as required by §80.23(a) of this chapter [title] (relating to Annual Reports), and notifying the department of the location of his/her books and records as required by §80.13 of this chapter [title] (relating to Books and Records).

(d) The fees for the application or for the renewal of a mortgage broker license or loan officer license shall be established by the Commissioner. The amount of the fees may be modified upon not less than 30 days advance notice posted on the Department's website. Fees are nonrefundable and nontransferable.

#### §80.4. *Qualifications for Obtaining Licenses* [~~obtaining licenses~~].

(a) Individual Mortgage Broker Licenses. In order to be issued a license as a Mortgage Broker, an individual applicant must establish to the satisfaction of the Commissioner that:

(1) the applicant is an individual of at least 18 years of age;

(2) the applicant is either a United States citizen or a lawfully admitted alien;

(3) the applicant maintains a Physical Office in the State of Texas and has designated that office in his or her application;

(4) the applicant either:

(A) has received a bachelor's degree in an area relating to finance, banking, or business administration from an accredited college or university AND has 18 months or more of actual experience in the mortgage lending field as evidenced by documentary proof of full-time employment for the required period as a licensed mortgage broker or licensed loan officer or with an individual [a person] exempt under §156.202 of the Act;

(B) is currently licensed in the State of Texas as:

(i) an active real estate broker;

(ii) an active attorney; or

(iii) an active general lines insurance agent or a limited lines insurance agent, or holds an equivalent insurance license under the Insurance Code [a local recording agent or insurance agent for a legal reserve life insurance company under Chapter 21 of the Insurance Code (or holds an equivalent license under the Insurance Code or its equivalent regulations as now or hereafter promulgated)]; or

(C) has three years or more experience in the mortgage lending field as evidenced by documentary proof of full-time employment for the required period as a loan officer or with an individual [a person] exempt under §156.202 of the Act;

(5) the applicant is in compliance with the financial requirements of Chapter 156, Finance Code, by participating in the Recovery Fund [either has net assets of \$25,000 or more (which must be maintained while the license is in effect) or has provided an acceptable surety bond in an amount of not less than \$50,000 (an acceptable bond being a bond issued by a surety licensed by the Texas Department of Insurance and issued on a form approved by the Texas Department of Insurance for that purpose)];

(6) the applicant has not been convicted of any Criminal Offense as defined in paragraph (13) of §80.2 of this chapter (relating to Definitions) [of this Chapter] or, if the applicant has been convicted of any such Criminal Offense, the applicant has been found by the Com-

missioner, in accordance with §53.023, Occupations Code, to be fit to be licensed as a Mortgage Broker;

(7) the applicant has passed an examination approved by the Finance Commission that demonstrates knowledge of the mortgage industry and the role and responsibilities of a mortgage broker;

(8) the applicant is of good moral character, including honesty, trustworthiness, and integrity;

(9) the applicant is not in violation of the Mortgage Broker License Act, a rule adopted under this chapter [Chapter] or any order previously issued to the applicant by the Commissioner; and

(10) provide the Commissioner with satisfactory evidence that:

(A) if the person has not been previously licensed as a mortgage broker or a loan officer under this subchapter, the person has completed 90 classroom hours of education courses approved by the Commissioner under this section; or

(B) if the person has not been previously licensed as a mortgage broker under this subchapter but has been licensed as a loan officer under this subchapter, the person has successfully completed an additional 30 classroom hours of education courses approved by the Commissioner under this section.

(b) Loan Officer Licenses. In order to be issued a license as a Loan Officer, an applicant must establish to the satisfaction of the Commissioner that:

(1) the applicant is an individual of at least 18 years of age;

(2) the applicant is either a United States citizen or a lawfully admitted alien;

(3) the applicant is sponsored by a licensed Mortgage Broker, as evidenced by an appropriately completed Loan Officer Sponsor Certification form;

(4) the applicant has either:

(A) successfully completed at least 60 hours of education courses approved by the Commissioner; or

(B) successfully completed 30 hours of education courses approved by the Commissioner if the applicant:

(i) has 18 months or more of experience as a mortgage loan officer as evidenced by documentary proof of full-time employment as a mortgage loan officer with a person exempt under §156.202 of the Act; [or]

(ii) is a person who meets the qualifications of subsection (a)(4)(B) of this section; or [-]

(C) currently holds an active mortgage broker license issued under this chapter.

(5) the applicant has not been convicted of any Criminal Offense as defined in paragraph (13) of §80.2 of this chapter [~~(relating to Definitions)~~] or, if the applicant has been convicted of any such Criminal Offense, the applicant has been found by the Commissioner, in accordance with §53.023, Occupations Code, to be fit to be licensed as a Loan Officer;

(6) the applicant has passed an examination approved by the Finance Commission that demonstrates knowledge of the mortgage industry and the role and responsibilities of mortgage brokers;

(7) the applicant is of good moral character, including honesty, trustworthiness, and integrity; and

(8) the applicant is not in violation of the Mortgage Broker License Act, a rule adopted under this chapter or any order previously issued to the applicant by the Commissioner.

(c) Entity Mortgage Broker Licenses. A corporation, limited liability company, or limited partnership may not act as a mortgage broker unless the entity obtains a mortgage broker license. To be eligible to obtain a mortgage broker license the entity must:

(1) designate an individual licensed as a mortgage broker as its designated representative. The designated representative must be:

(A) an officer of the corporation if the entity is a corporation;

(B) a manager of the limited liability company if the entity is a limited liability company; or

(C) if the entity is a limited partnership:

(i) an individual who is a general partner;

(ii) an officer of a general partner that is a corporation; or

(iii) a manager of a general partner that is a limited liability company.

(2) demonstrate to the satisfaction of the Commissioner that the applicant's designated representative [applicant] meets the minimum financial net worth requirements for a mortgage broker [or prove to the Commissioner a surety bond in an amount not less than \$50,000 as provided in subsection (a)(5) of this section. In the alternative, the Commissioner will accept evidence that the mortgage broker who is the designated representative meets the minimum net worth requirements for a mortgage broker].

(d) Designated representative. A mortgage broker may not act as a designated representative at any time while the broker's license is inactive, expired, suspended or revoked.

(e) Additional Information. The Commissioner may require such additional, clarifying, or supplemental information from any applicant for the issuance or renewal of any license pursuant to the Act as is deemed necessary or advisable to determine that the requirements of the Act have been met.

#### §80.5. *Renewals.*

(a) A license may be renewed upon:

(1) submission of a completed application for renewal on the prescribed form (together with any requested additional, clarifying, or supplemental information) together with the payment of the applicable renewal application fee;

(2) providing the Commissioner with satisfactory evidence of compliance with the applicable educational requirements or licensing requirements specified in Finance Code §156.208; and §156.204 of the Act and §80.4 of this chapter (relating to Qualifications for Obtaining Licenses).

(b) A renewal of a license may be denied if:

(1) the license holder has been convicted of a criminal offense the Commissioner determines is directly related to the occupation of a mortgage broker or loan officer as provided by Chapter 53 of the Occupations Code;

(2) the license holder is in violation of the Act, this chapter [Chapter], or an order of the Commissioner;

(3) the license holder has engaged in conduct evidencing the licensee's lack of good moral character, including the licensee's honesty, trustworthiness, or integrity; ~~[or]~~

(4) the mortgage broker or loan officer is in default on a student loan administered by the Texas Guaranteed Student Loan Corporation, pursuant to §57.491, Education Code; or

(5) ~~[(4)]~~ on any other ground provided by statute or this chapter ~~[Chapter]~~.

(c) A licensed individual on active military duty serving outside of Texas shall be exempt from any late filing penalty fee imposed for renewing after the expiration date of the license, and is entitled to an additional amount of time, equal to the total number of years or parts of years that the individual serves or served on active duty, to complete any continuing education requirements and other requirements related to the renewal of the license, pursuant to §55.001, Occupations Code.

#### §80.6. Sponsorship and Termination Thereof.

(a) An applicant for a Loan Officer license must be sponsored by a licensed Mortgage Broker otherwise the license will be issued as inactive. A Loan Officer may not be sponsored by or act for more than one Mortgage Broker at any given time. The Mortgage Broker must acknowledge and accept the responsibilities set forth in the Act, including responsibility for the actions of the Loan Officer, by executing and providing to the Commissioner a Loan Officer Sponsor Certification form.

(b) If a Loan Officer's license is approved as active, it will be issued to ~~[and must be held by]~~ the sponsoring ~~[Sponsoring]~~ Mortgage Broker ~~[and displayed at the office of the sponsoring Mortgage Broker as specified on the Mortgage Broker's license]~~.

(c) If sponsorship of a Loan Officer is terminated by the sponsoring Mortgage Broker, the Mortgage Broker shall immediately notify the Commissioner that the sponsorship has terminated. If sponsorship is terminated by the Loan Officer, the Loan Officer shall immediately notify the Commissioner that the sponsorship has ended. The license will become inactive. Sponsorship of a Loan Officer remains in effect until the Commissioner has been notified in writing of the termination of sponsorship. Prior to its scheduled expiration, an inactive Loan Officer's license may be reactivated upon designation of a new sponsoring Mortgage Broker, as evidenced by execution and providing to the Commissioner of a Loan Officer Sponsor Certification form.

(d) Loan officers affiliated with an entity which is licensed as a mortgage broker may be sponsored by the entity or an individual mortgage broker which is affiliated with and does business solely on behalf of the entity.

#### §80.7. Background Checks ~~[checks]~~.

(a) In connection with each application for the issuance of a license to an individual under the Act, the Commissioner shall initiate a background check by obtaining a criminal history on the applicant from the Federal Bureau of Investigation and Department of Public Safety and shall require a fingerprint card or scan and authorization for such additional background checks as the Commissioner may deem necessary or advisable.

(b) The Commissioner shall keep confidential any criminal background information obtained under this subsection and §156.206 of the Act and may not release or disclose the information unless:

(1) the information is a public record at the time the Commissioner obtains the information; or

(2) the Commissioner releases the information:

(A) under order from a court;

(B) with the permission of the applicant;

(C) to a person through whom the applicant is conducting or will conduct business; or

(D) to a governmental agency.

(c) Notwithstanding subsection (b) of this section, criminal history record information obtained from the Federal Bureau of Investigation may be released or disclosed only to a governmental entity or as authorized by federal statute, federal rule, or federal executive order.

(d) The provisions of this section shall apply to the background check to be conducted by the Commissioner for exclusive agents of registered financial services companies.

(e) An individual considering applying for a license may request a criminal history evaluation letter regarding the person's eligibility for a license as defined in Chapter 53, Subchapter D, Occupations Code. The request must be made on a form promulgated by the department and include all pertinent court documentation including certified copies of all court indictments and/or judgements, and orders, and an explanation of the circumstances and events of the criminal action that led to the conviction or sentence, and the basis for the person's potential ineligibility. The fee for this process is \$75 per request. Upon receipt of the request, the department will:

(1) investigate the information provided by the individual to determine if there is ground for ineligibility; and

(2) notify the individual as to the department's determination within 90 days of receipt of the individual's request.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER C. ADMINISTRATION AND RECORDS

### 7 TAC §80.12, §80.13

The amendments are proposed under Finance Code §11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under Finance Code, §156.102(a) and (b), which authorize the Commissioner of the Texas Department of Savings and Mortgage Lending, subject to review and compliance with the directives of the Finance Commission, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

The section of the Act affected by the proposed amendments is Finance Code, §156.102(a) relating to authority for the Finance Commission to adopt rules to implement the intended purpose of the Act or to enforce the Act. The proposed amendments relate to the following sections of the Finance Code: §§156.203, 156.204, 156.205, 156.208, 156.212, 156.301, 156.302, 156.303, and 156.506.

**§80.12. [~~Display of License Verification;~~] License Record Changes.**

(a) Each application for a license under the Act requires the applicant to indicate the location(s) at which he or she proposes to conduct the licensed activity. A separate license record is required for each specified location. When issued, each license will indicate the location for which it is issued.

~~[(b) Each required license issued pursuant to the Act and this Chapter must be prominently displayed at the location indicated thereon. A Verification of Licensure document will be made available for download and printing on the Department's website. With respect to any such licensed location which is primarily a computer or similar electronic device, if it is not reasonably possible to display any and all required licenses at such location, the person(s) responsible for complying with the requirement for displaying required licenses may comply with such requirement by setting forth the information specified in their license and causing it to be conspicuously displayed on the first computer screen viewed by a prospective Mortgage Applicant after accessing such computer or similar electronic device. If, due to the number of persons required to display such information, more than one screen is required, sequentially accessed screens following the first screen accessed will be deemed to comply with this requirement.]~~

(b) ~~[(e)]~~ Before the tenth day preceding the effective date of any change in address, a Mortgage Broker shall notify the Commissioner in writing of the proposed new address of that Mortgage Broker or, as applicable, a Loan Officer sponsored by that Mortgage Broker. The request shall be on the form promulgated by the Commissioner and include a \$25 processing fee. Prior to conducting business at the new address, the licensee must confirm that the address change has been processed, by accessing ~~[and must download from]~~ the Department's website~~;~~ print and post the amended Verification of Licensure for each licensee doing business from the new address].

(c) ~~[(d)]~~ Before the tenth day following the effective date of any personal name change, a licensee shall notify the Commissioner in writing of the new personal name. The request shall be on the form promulgated by the Commissioner and include supporting documentation as well as a \$25 processing fee. Prior to conducting business using the new name, the licensee must confirm that the name change has been processed, by accessing ~~[and must download from]~~ the Department's website~~;~~ print and post the amended Verification of Licensure for each licensee using the new name].

(d) ~~[(e)]~~ Before the tenth day preceding the effective date of a new or changed corporate or assumed name, a licensee shall notify the Commissioner in writing of the new name. The request shall be on the form promulgated by the Commissioner and include supporting documentation as well as a \$25 processing fee. Prior to conducting business using the new or amended assumed name, the licensee must confirm that the assumed name has been processed, by accessing ~~[and must download from]~~ the Department's website~~;~~ print and post the amended Verification of Licensure for each licensee using the new or amended assumed name].

**§80.13. Books and Records.**

In order to assure that each licensee will have all records necessary to enable the Commissioner or the Commissioner's designee to investigate complaints and discharge their responsibilities under the Act and this chapter ~~[Chapter]~~, each Mortgage Broker and Loan Officer shall maintain records as set forth below. The particular format of records to be maintained is not specified. However, they must be complete, current, legible, readily accessible, and readily sortable. Records maintained for other purposes, such as compliance with other state and federal laws, will be deemed to satisfy these requirements if they include the same information.

(1) Mortgage Application Records. Each Mortgage Broker and each Loan Officer is required to maintain, at the location specified in his or her application, the following books and records:

(A) A Mortgage Loan file for each Mortgage Loan application received; each such file shall contain at least the following:

(i) a copy of the signed and dated Mortgage Loan application (including any attachments, supplements, or addenda thereto);

(ii) either a copy of the signed closing statement if the Mortgage Loan is closed in the name of the Mortgage Broker or an entity through which the Mortgage Broker is providing mortgage lending services or documentation of the timely denial or other disposition of the application for a Mortgage Loan;

(iii) a copy of the disclosure statement required by the Act and subsection (a) of §80.9 of this chapter ~~[Chapter]~~ (relating to Required Disclosures);

(iv) a copy of each item of correspondence, each evidence of any contractual arrangement or understanding (including, but not limited to, any interest rate lock-ins or loan commitments), and all notes and memoranda of conversations or meetings with any Mortgage Applicant or any other party in connection with that Mortgage Loan application or its ultimate disposition.

(v) a copy of the notice to applicants required by Finance Code §343.105.

(B) Mortgage Transaction Log. A mortgage transaction log, maintained on a current basis (which means that all entries must be made within no more than seven days from the date on which the matters they relate to occurred), setting forth, at a minimum:

(i) the name of each Mortgage Applicant and how to contact them;

(ii) the date of the Mortgage Loan application;

(iii) a description of the disposition of the application for a Mortgage Loan;

(iv) the identity of the person or entity who initially funded and/or acquired the Mortgage Loan and information as to how to contact them; and~~;~~

(v) the name of the originator.

(C) General Business Records. The following general business records:

(i) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to the mortgage brokerage business of such person;

(ii) complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of a Mortgage Applicant, including a record of the date and amount of all such payments actually made by each Mortgage Applicant;

(iii) copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all employees, independent contractors and others compensated by such Mortgage Broker or Loan Officer in connection with the conduct of mortgage lending business;

~~[(iv) all correspondence and other matters relating to the maintenance of any surety bond required by the Act;]~~

(iv) ~~[(v)]~~ copies of all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any

and all correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(v) [(vii)] copies of all contractual arrangements or understandings with third parties in any way relating to the providing of mortgage lending services (including, but not limited to, any delegations of underwriting authority, any agreements for pricing of goods or services, any investor contracts, any employment agreements, and any non-compete agreements);

(vi) [(viii)] copies of all reports of audits, examinations, inspections, reviews, investigations, or other similar matters performed by any third party, including any regulatory or supervisory authorities; and

(vii) [(ix)] copies of all advertisements in the format (recorded sound, video, print, etc.) in which they were published or distributed.

(2) Each Mortgage Broker and each Loan Officer shall maintain such other books and records as may be required to evidence compliance with applicable state and federal laws and regulations including, but not limited to, the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(3) Each Mortgage Broker and Loan Officer shall maintain such other books and records as the Commissioner or the Commissioner's designee may from time to time specify in writing.

(4) Each and all of the foregoing books and records must be maintained in good order and shall be produced for the Commissioner or the Commissioner's designee upon request. Failure to produce such books and records upon request, after a reasonable time for compliance, may be grounds for suspension or revocation of a license.

(5) The foregoing books and records shall be maintained for three years or such longer period(s) as may be required by applicable state and/or federal laws and regulations.

(6) A Loan Officer may meet applicable record-keeping requirements if his or her sponsoring Mortgage Broker maintains the required records. Upon termination of a Mortgage Broker's sponsorship of a Loan Officer, that Loan Officer's required records shall remain with the Mortgage Broker or transferred to a new sponsoring Mortgage Broker. The Commissioner shall be advised in writing within ten days of any transfer of such records. Upon written request from a former Loan Officer, a former sponsoring Mortgage Broker may release to his or her former Loan Officer copies of records relating to Mortgage Loans handled by such former Loan Officer.

(7) Upon the termination of operations as a Mortgage Broker, the Mortgage Broker shall notify the Commissioner Department where the required records will be maintained for the prescribed periods. If such records are transferred to another Mortgage Broker, the transferee Mortgage Broker shall, within ten days of accepting responsibility for maintaining such records, advise the Commissioner in writing of that fact.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER D. COMPLAINTS AND INVESTIGATIONS

### 7 TAC §80.15

The amendments are proposed under Finance Code §11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under Finance Code, §156.102(a) and (b), which authorize the Commissioner of the Texas Department of Savings and Mortgage Lending, subject to review and compliance with the directives of the Finance Commission, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

The section of the Act affected by the proposed amendments is Finance Code, §156.102(a) relating to authority for the Finance Commission to adopt rules to implement the intended purpose of the Act or to enforce the Act. The proposed amendments relate to the following sections of the Finance Code: §§156.203, 156.204, 156.205, 156.208, 156.212, 156.301, 156.302, 156.303, and 156.506.

*§80.15. Complaints, Administrative Penalties, and Disciplinary and/or Enforcement Actions [administrative penalties, and disciplinary and/or enforcement actions].*

(a) Upon receipt of a signed, written complaint setting forth known, suspected, or asserted facts relating to acts or omissions of a person required to be licensed under the Act, the Commissioner or the Commissioner's designee will:

(1) make an initial determination whether the complaint sets forth reasonable cause to warrant an investigation;

(2) if it has been determined that the complaint warrants an investigation, advise the Mortgage Broker or Loan Officer who is the subject of the complaint by written notice to the authorized office specified on that person's license that a complaint has been filed;

(3) if it is determined that a complaint does not warrant investigation, so advise the complainant and close the file, advising the complainant of the right to bring forth additional facts or information to have the initiation of an investigation reconsidered;

(4) if an investigation is to be conducted, advise the party who is the subject of the complaint that an investigation will be conducted and conduct such investigation as is deemed appropriate in light of all the relevant facts and circumstances then known. Such investigation may include any or all of the following:

(A) review of documentary evidence;

(B) interviews with complainants, licensees, and third parties;

(C) obtaining reports, advice, and other comments and assistance of other state and/or federal regulatory, enforcement, or oversight bodies; and

(D) such other lawful investigative techniques as the Commissioner reasonably deems necessary and/or appropriate, including, but not limited to, requesting that complainants and/or other parties

made the subject of complaints provide explanatory, clarifying, or supplemental information.

(b) The Commissioner may conduct an undercover or covert investigation only if the Commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of the Act.

(c) The Commissioner may authorize or direct an employee of the Department to initiate a complaint against a person licensed under the Act and to conduct the appropriate investigation if:

(1) a court judgment or an administrative claim against that person has been paid from the Recovery Fund;

(2) that person holds a provisional license issued under §156.207 of the Act and subsection (b) of §80.3 of this chapter [Chapter] (relating to Provisional Licenses);

(3) the Commissioner has reasonable cause to suspect or believe that person may have been convicted of a criminal offense which may constitute grounds for the suspension or revocation of that person's license; or

(4) that person has failed to honor a check issued to the Commissioner and in addition to the disciplinary action, if any, the commissioner may collect a fee in an amount not to exceed \$50 for any returned check or credit card charge back.

(d) If the Commissioner determines that a person has violated the requirements of the Act, this chapter [Chapter], or any order adopted under the Act or this chapter [Chapter], the Commissioner, after notice and opportunity for hearing, may impose an administrative penalty on that person. Such penalties shall not exceed \$2500 per violation. Each day that a violation occurs or is continuing is deemed to be a separate violation for the purposes of imposing administrative penalties hereunder.

(e) In fixing the amount of any administrative penalty(ies) for any violation(s) of the Act or these regulations, the Commissioner shall consider:

(1) the seriousness of each violation, including, but not limited to, the nature, circumstances (including any mitigating circumstances), extent, and gravity of each violation;

(2) the history of any previous violations;

(3) the amount deemed necessary or appropriate to deter future violations; efforts to correct the violation(s); and

(4) any other matter that justice may require or that the Commissioner determines has a reasonable bearing on the appropriateness of the amount of the administrative penalty.

(f) The enforcement of the penalty may be stayed while it is under judicial review if the person pays the penalty to the clerk of the court which is reviewing the penalty or files with such court a *superedeas* bond in the amount of the penalty. A person who cannot afford to pay the penalty or provide the bond may stay enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to provide security for costs, subject to the right of the Commissioner to contest the affidavit as provided for by those rules.

(g) The Attorney General for the State of Texas may sue to collect a penalty imposed under the Act or these regulations.

(h) A proceeding to impose an administrative penalty under the Act and these regulations is considered to be a contested case under Chapter 2001, Government Code.

(i) If a person against whom an order is made requests a hearing, the Commissioner shall set and give notice of a hearing before the Commissioner or a hearings officer. The hearing shall be governed by Chapter 2001, Government Code. Based on the findings of fact, conclusions of law, and any recommendations of the hearings officer, the Commissioner shall by order find that a violation has or has not occurred.

(j) If a hearing has not been requested under the preceding subsection of these regulations within thirty days of the date on which the initial order is issued, such order will, with no further action by the Commissioner or anyone else, become final and not subject to appeal.

(k) If the Commissioner has reasonable cause to believe that a person licensed under this chapter [Chapter] has violated or is about to violate the Act, this chapter [Chapter], or an order under this chapter [Chapter], the Commissioner may, without notice and hearing, issue an order to cease and desist a particular action or an order to take affirmative action, or both, to enforce compliance with the Act and this chapter [Chapter]. Any such order must contain a reasonably detailed statement of the facts on which the order is made. If a person against whom an order is made requests a hearing, the Commissioner shall set and give notice of a hearing to be held in accordance with this chapter [Chapter] and Chapter 2001, Government Code. Based on the findings of fact and conclusions of law, the Commissioner may find by order that a violation has or has not occurred.

(l) In addition to or in lieu of an action to invoke or enforce suspension or revocation of a license or to impose administrative penalties or any other enforcement action permitted by the Act and this chapter [Chapter], the Commissioner may initiate an action which, upon notice and an opportunity for a hearing, will result in the affected licensee's being placed on probationary status. The order placing a licensee on probationary status shall specify the terms and conditions of probation.

(m) The Commissioner may, after giving notice and an opportunity for hearing, impose against any person who violates a cease and desist order, an administrative penalty in an amount not to exceed \$1000 for each day on which the violation is continuing. In addition to any other remedy provided for by law, the Commissioner may institute in district court for Travis County an action for injunctive relief and/or to collect the administrative penalty. A bond is not required of the Commissioner with respect to any request for injunctive relief under this subsection. [Any penalty collected under this subsection will be deposited in the Recovery Fund.]

(n) The Commissioner may order disciplinary action after notice and opportunity for hearing against a licensed mortgage broker or a licensed loan officer if the Commissioner becomes aware during the term of the license of any fact that would have been grounds for denial of an original license if the fact had been known by the Commissioner on the date the license was issued.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Caroline Jones

General Counsel

Texas Department of Savings and Mortgage Lending

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## SUBCHAPTER I. INSPECTIONS AND INVESTIGATIONS

### 7 TAC §80.20

The amendments are proposed under Finance Code §11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under Finance Code, §156.102(a) and (b), which authorize the Commissioner of the Texas Department of Savings and Mortgage Lending, subject to review and compliance with the directives of the Finance Commission, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

The section of the Act affected by the proposed amendments is Finance Code, §156.102(a) relating to authority for the Finance Commission to adopt rules to implement the intended purpose of the Act or to enforce the Act. The proposed amendments relate to the following sections of the Finance Code: §§156.203, 156.204, 156.205, 156.208, 156.212, 156.301, 156.302, 156.303, and 156.506.

#### §80.20. *Inspections.*

(a) The Commissioner, operating through the Department staff and such others as the Commissioner may, from time to time, designate will conduct periodic inspections of mortgage broker and loan officer licensees as the Commissioner deems necessary.

(b) Except when the Department determines that giving advance notice would impair the inspection, the Department will give licensees advance notice of each inspection. Such notice will be sent to the licensee's address of record or e-mail address on file with the Department and will specify the date on which the Department's inspectors are scheduled to arrive at the licensee's office. Failure of the licensee to actually receive the notice will not be grounds for delay or postponement of the inspection. The notice will include a list of the documents and records the licensee should have available for the inspector to review.

(c) Inspections will be conducted to determine compliance with the Act and will specifically address whether:

(1) All persons conducting mortgage broker or loan officer activity are properly licensed;

(2) All locations at which such activities are conducted are properly licensed;

(3) All required books and records are being maintained in accordance with §80.13 of this chapter (relating to Books and Records);

(4) Legal and regulatory requirements applicable to licensees or the licensee's mortgage broker business are being properly followed; and

(5) Such other matters as the Commissioner may deem necessary or advisable to carry out the purposes of the Act.

(d) The Commissioner may require reimbursement in an amount not to exceed \$325 for each examiner a day for on-site examination or investigation of a mortgage broker if records are located out of state or if the review is considered necessary beyond the routine examination process. [Inspections will be conducted at no additional cost to the licensees.]

(e) The inspector will review a sample of Mortgage Loan Files identified by the inspector on the date of inspection and randomly selected from the licensee's Mortgage Transaction Log. The inspector may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(f) The inspector may require a licensee, at his or her own cost, to make copies of loan files or such other books and records as the inspector deems appropriate for the preparation of or inclusion in the inspection report.

(g) The work papers, compilations, findings, reports, summaries, and other materials, in whatever form, relating to an inspection conducted under this section, shall be maintained as confidential except as required or expressly permitted by law.

(h) Failure of a licensee to cooperate with the inspection or failure to grant the inspector access to books, records, documents, operations, and facilities of the licensee will subject the licensee and any sponsoring broker (if applicable) to enforcement actions by the Commissioner, including, but not limited to, administrative penalties.

(i) Whenever the Department must travel out-of-state to conduct an inspection of a licensee because that licensee maintains required records at a location outside of the state, the licensee will be required to reimburse the Department for the actual cost the Department incurs in connection with such out-of-state travel including, but not limited to, transportation, lodging, meals, employee travel time, telephone and FAX communication, courier service and any other reasonably related costs.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

### CHAPTER 82. ADMINISTRATION

#### 7 TAC §82.3

The Finance Commission of Texas (commission) proposes new 7 TAC §82.3, concerning Request for Criminal History Evaluation Letter.

The purpose of the new rule is to implement House Bill 963 (HB 963) as enacted by the 81st Texas Legislature during the 2009 session. HB 963 adds Subchapter D to Chapter 53 of the Texas Occupations Code. The new subchapter provides procedures for persons to obtain preliminary information regarding their eligibility for certain occupational licenses before they begin a training program for that occupation. In particular, HB 963 adds §53.105, which allows a licensing authority to charge a fee to a person requesting a criminal history evaluation letter.

Section 82.3(a) outlines the purpose of the proposed rule, which is to provide the procedures for a person considering applying for a license to request a criminal history evaluation letter under Texas Occupations Code, Chapter 53, Subchapter D. Subsection (a) also adopts the definitions used in §82.2.

Section 82.3(b) delineates the applicability of this rule to all persons, including business entities, considering applying for a license with the Office of Consumer Credit Commissioner under Title 4 of the Texas Finance Code. The new rule also applies to any other licensed business, occupation, or profession requiring a criminal history evaluation assigned to the regulatory authority of the agency under other law.

Section 82.3(c) lists the required information that must be submitted by the requestor to the agency.

Section 82.3(d) explains that business entities must provide the required information for every individual who would qualify as a principal party if the entity were applying for a license.

Section 82.3(e) sets the processing fees of \$75 for each entity requestor plus \$40 for fingerprint processing for each individual or principal party included in the criminal history evaluation letter request.

Section 82.3(f) provides that upon completion of the agency's investigation, the agency will notify the requestor of the agency's determination within 90 days of the requestor satisfying all of the agency's requests for information to complete the criminal history evaluation letter request.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of administering the rule.

For each year of the first five years the new rule is in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed new rule will be the provision of a clear and straightforward procedure for individuals to request a criminal history evaluation letter as required by HB 963. The anticipated costs to persons who are required to comply with proposed new §82.3 are the processing fees of \$75 for each entity requestor plus \$40 for fingerprint processing for each individual or principal party included in the request. These fees are necessary in order to cover the costs of administration. Aside from these fees, there will be no effect on individuals required to comply with the section as proposed. There will be no adverse economic effect on small or micro businesses.

The processing fees may ultimately be offset or even result in a cost savings to persons who request a criminal history evaluation letter and subsequently learn that they would not be eligible for a license. Such persons would potentially save the costs of an educational program or the cost of filing a licensing application.

Comments on the proposed new rule may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the new rule is published in the *Texas Register*. At the conclusion of the 31st day after the proposed rule is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The new rule is proposed under Texas Occupations Code, §53.105, as enacted by HB 963 (Acts 2009, 81st Leg.), which authorizes a licensing authority to charge a person requesting an evaluation letter a fee sufficient to cover the costs of administration. The rule is also proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §14.157 authorizes

the commission to adopt rules governing the custody and use of criminal history record information obtained under Texas Finance Code, Chapter 14, Subchapter D.

The statutory provisions affected by the proposed new rule are contained in Texas Finance Code, Chapter 14 and Title 4.

§82.3. Request for Criminal History Evaluation Letter.

(a) Purpose and definitions. The purpose of this section is to provide the procedures for a person considering applying for a license from the Office of Consumer Credit Commissioner to request a criminal history evaluation letter regarding the person's eligibility for a license under Texas Occupations Code, Chapter 53, Subchapter D. This section adopts the words and terms as defined in §82.2 of this title (relating to Public Information Requests; Charges).

(b) Applicability. This section applies to all persons, including business entities, considering applying for a license with the agency under Title 4 of the Texas Finance Code. This section also applies to any other licensed business, occupation, or profession requiring a criminal history evaluation assigned to the regulatory authority of the agency under other law.

(c) Required information. A request for a criminal history evaluation letter must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the request, and the request must include the following:

(1) all court documentation relevant to the requestor's criminal history, including:

(A) copies of all court indictments, judgments, and orders against the requestor; and

(B) an explanation of the circumstances and events of the criminal action that led to the arrest, conviction, or sentence;

(2) the basis for the requestor's potential ineligibility for a license; and

(3) an explanation as to why any potential ineligibility should be disregarded.

(d) Business entities. Business entities must provide the information required by subsection (c) of this section for every individual who would qualify as a principal party if the entity were applying for a license. To determine qualifying principal parties, each business entity requesting a determination under this section should consult the definition of "principal party" located in the respective chapter of this title under which the entity is considering applying for a license.

(e) Processing fees. The fees to process a request for a criminal history evaluation letter are \$75 for each entity requestor plus \$40 for fingerprint processing for each individual or principal party included in the criminal history evaluation letter request.

(f) Notice of agency determination. Upon completion of the agency's investigation, the agency will notify the requestor of the agency's determination within 90 days of the requestor satisfying all of the agency's requests for information to complete the criminal history evaluation letter request. The determination letter will include the agency's determination on each ground of potential ineligibility.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2009.



## CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

### SUBCHAPTER A. GENERAL PROVISIONS

#### 7 TAC §84.102

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §84.102, concerning Definitions, relating to the regulation of motor vehicle retail installment sales.

The purpose of these amendments is to implement recent legislation enacted by the 81st Texas Legislature affecting the regulation of motor vehicle retail installment sales, including the following bills: Senate Bill (SB) 1965 (commercial vehicles) and SB 1966 (debt cancellation agreements). The following paragraphs provide a general introduction regarding each legislative bill.

During the 2009 legislative session, the Texas Legislature passed SB 1965 relating to the regulation of retail installment sales contracts for commercial vehicles. Certain provisions within Chapter 348 of the Texas Finance Code are not applicable to transactions involving commercial vehicles. Furthermore, these consumer-oriented provisions prevent commercial buyers from contracting for services related to commercial uses that would not be relevant to a consumer purchase. The intent of SB 1965 is to exempt retail installment sales contracts for commercial vehicles from certain provisions of the Texas Finance Code.

Debt cancellation agreements were authorized to be offered as part of consumer loans in 2003, but at that time the legislature did not address the sale of these products with regard to motor vehicle retail installment sales. With the enactment of SB 1966, the 81st Texas Legislature amended the Texas Finance Code to allow the sale of debt cancellation agreements in connection with Chapter 348 retail installment sales contracts, with certain limitations and restrictions. Specifically, the Texas Legislature added §348.124 to the Texas Finance Code and amended §348.001 (adding a definition of "debt cancellation agreement"), §348.005 (authorizing a fee for debt cancellation agreements as an itemized charge), and §348.208 (conforming changes).

In order to properly implement the changes made by SB 1965, as well as certain applicability issues contained in SB 1966, the amendments to §84.102 add definitions for "commercial vehicle" and "ordinary vehicle" to be used throughout 7 TAC Chapter 84. Additionally, the existing definitions following the two new additions are being renumbered accordingly.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of administering the amendments.

For each year of the first five years the amendments are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will implement recent legislative concepts in order to provide greater clarity. This greater clarity

will bring stability to the industry from a number of standpoints including that any entity that operates within the parameters of the rules will be protected from litigation brought under the penalty provisions of Subtitle B of Title 4 (Texas Finance Code, Chapter 349). Additional public benefits resulting from the proposed amendments will be consistency in the financing of motor vehicles, enhanced protection for consumers, and the availability of uniform, reliable procedures for motor vehicle sales finance licensees.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to [laurie.hobbs@occc.state.tx.us](mailto:laurie.hobbs@occc.state.tx.us). To be considered, a written comment must be received on or before the 31st day after the date the proposed amendments are published in the *Texas Register*. At the conclusion of the 31st day after the proposed amendments are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

Regarding statutory authority from recent legislation for particular provisions, the amendments concerning ordinary vehicles are proposed under Texas Finance Code, §348.0015, as enacted by SB 1965 (Acts 2009, 81st Leg.), which authorizes the commission to determine by rule a motor vehicle that is of a type typically used for personal, family, or household use.

In reference to all of the amendments, they are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 348.

#### §84.102. *Definitions.*

(1) - (2) (No change.)

(3) Commercial vehicle--A motor vehicle that is not used primarily for personal, family, or household use and has the same meaning as defined by Texas Finance Code, §348.001(a-1).

(4) ~~[(3)]~~ Contract rate--The annual time price differential rate that may be stated in a retail installment sales contract, and that accrues or is assessed against the principal balance that is subject to a finance charge for the term of the contract. The contract rate cannot exceed the daily rate converted to an annualized rate.

(5) ~~[(4)]~~ Creditor--The seller or any subsequent holder or assignee of the retail installment sales contract.

(6) ~~[(5)]~~ Daily rate--The rate authorized under Texas Finance Code, §348.105, or the simple rate equivalent of the rate applicable to the contract under Texas Finance Code, §348.104, computed on a daily basis using a 365-day calendar year.

(7) ~~[(6)]~~ Default charge or late charge--The additional charge for a late payment on a contract.

(8) ~~[(7)]~~ Deferment charge--The payment of an additional charge to defer the payment date of a scheduled payment on a contract.

(9) ~~[(8)]~~ Holder--Holder includes retail sellers as well as any person who subsequently purchases, acquires, or otherwise receives the retail installment sales contract. All holders are creditors.

(10) ~~[(9)]~~ Irregular payment contract--A contract:

(A) that is payable in installments that are not consecutive, monthly, and substantially equal in amount; or

(B) the first scheduled installment of which is due later than one month and 15 days after the date of the contract.

(11) ~~[(10)]~~ Licensee--Any person who has been issued a motor vehicle sales finance license pursuant to Texas Finance Code, Chapter 348.

(12) Ordinary vehicle--A motor vehicle that is used primarily for personal, family, or household use.

(13) ~~[(11)]~~ Principal balance subject to finance charge--The principal balance used in the determination or calculation of the time price differential charge.

(A) Sales tax advanced transaction--In a sales tax advanced transaction, the principal balance subject to a finance charge is computed by:

(i) adding:

(I) the cash price of the vehicle;

(II) the amount of the authorized itemized charges;

(III) sales tax;

(IV) an authorized and properly disclosed documentary fee;

(V) an amount authorized under Texas Finance Code, §348.404(b); and

(ii) subtracting from the results under clause (i) of this subparagraph the amount of the retail buyer's down payment in money, goods, or both.

(B) Sales tax deferred transaction--In a sales tax deferred transaction, the principal balance subject to a finance charge does not include the deferred sales tax. The principal balance subject to a finance charge is computed by:

(i) adding:

(I) the cash price of the vehicle (excluding sales tax);

(II) the amount of the authorized itemized charges (excluding sales tax);

(III) an authorized and properly disclosed documentary fee;

(IV) an amount authorized under Texas Finance Code, §348.404(b); and

(ii) subtracting from the results under clause (i) of this subparagraph the amount of the retail buyer's down payment in money, goods, or both.

(14) ~~[(12)]~~ Regular payment contract--Any contract that is not an irregular payment contract.

(15) ~~[(13)]~~ Scheduled installment earnings method--The scheduled installment earnings method is a method to compute the finance charge by applying a daily rate to the unpaid principal balance as if each payment will be made on its scheduled installment date. A payment received before or after the due date does not affect the amount of the scheduled reduction in the unpaid principal balance. Under this method, a finance charge refund is calculated by deducting the earned finance charges from the total finance charges. If prepayment in full or demand for payment in full occurs between payment due dates, a daily rate equal to 1/365th of the annual rate is multiplied by the unpaid principal balance. The result is then multiplied by the actual number of days from the date of the previous scheduled installment through the date of prepayment or demand for payment in full to determine earned finance charges for the abbreviated period. In addition to the earned finance charges calculated in this paragraph, the creditor may also earn a \$150 acquisition fee for a heavy commercial vehicle, or a \$25 fee for other vehicles, so long as the total of the earned finance charges and the acquisition fee do not exceed the finance charge disclosed in the contract. The creditor is not required to refund unearned finance charges if the refund is less than \$1.00. The scheduled installment earnings method may be used with either an irregular payment contract or a regular payment contract. The computation of finance charges must comply with the U.S. rule as defined in Appendix J of 12 C.F.R. Part 226 (Regulation Z).

(16) ~~[(14)]~~ Sales tax advanced transaction--A retail installment sales transaction in which a retail seller remits the entire amount of the sales tax to the appropriate taxing authority within 20 working days of the sale.

(17) ~~[(15)]~~ Sales tax deferred transaction--A retail installment sales transaction in which a retail seller or a qualified related finance company collects sales tax from the retail buyer and remits the tax under Tax Code, §152.047 to the Comptroller of Public Accounts.

(18) ~~[(16)]~~ Seller--The seller of the motor vehicle. This term is synonymous with the term "retail seller."

(19) ~~[(17)]~~ Sum of the periodic balances method (Rule of 78s).

(A) Under this method, the finance charge refund is calculated as follows:

(i) Subtract an acquisition fee not greater than \$150 for a heavy commercial vehicle, or \$25 for other vehicles, from the total finance charge.

(ii) Multiply the amount computed in clause (i) of this subparagraph by the refund percentage computed below. The result is the finance charge refund.

(iii) Compute the refund percentage by:

(I) Computing the sum of the unpaid monthly balances under the contract's schedule of payments beginning:

(-a-) On the first day, after the date of the prepayment or demand for payment in full; that is, the date of a month that corresponds to the date of the month that the first installment is due under the contract; or

(-b-) If the prepayment or demand for payment in full is made before the first installment date under the contract, one month after the date of the second scheduled payment of the contract occurring after the prepayment or demand;

(II) Dividing the result in subclause (I) of this clause by the sum of all of the monthly balances under the contract's schedule of payments.

(B) As an alternative for heavy commercial vehicles, as defined in the Texas Finance Code, the sum of the periodic balances method may be computed as follows:

(i) Multiply the total finance charge by a refund percentage determined as follows:

(I) Compute the sum of the unpaid monthly balances under the contract's schedule of payments beginning:

(-a-) On the first day, after the date of the prepayment or demand for payment in full; that is, the date of a month that corresponds to the date of the month that the first installment is due under the contract; or

(-b-) If the prepayment or demand for payment in full is made before the first installment date under the contract, one month after the date of the second scheduled payment of the contract occurring after the prepayment or demand;

(II) Divide the result in subclause (I) of this clause by the sum of all of the monthly balances under the contract's schedule of payments.

(ii) From the result derived in clause (i) of this subparagraph, deduct an acquisition fee not to exceed \$150.

(C) The creditor is not required to give a finance charge refund if it would be less than \$1.00.

(D) The sum of the periodic balances method may not be used with an irregular payment contract.

(20) [(18)] True daily earnings method--The true daily earnings method is a method to compute the finance charge by applying a daily rate to the unpaid principal balance. The daily rate is 1/365th of the equivalent contract rate. The earned finance charge is computed by multiplying the daily rate of the finance charge by the number of days the actual unpaid principal balance is outstanding. Payments are credited as of the time received; therefore, payments received prior to the scheduled installment date result in a greater reduction of the unpaid principal balance than the scheduled reduction, and payments received after the scheduled installment date result in less than the scheduled reduction of the unpaid principal balance. The computation of finance charges must comply with the U.S. rule as defined in Appendix J of 12 C.F.R. Part 226 (Regulation Z).

(21) [(19)] U.S. Rule--The ruling of the United States Supreme Court in *Story v. Livingston*, 38 U.S. (13 Pet.) 359, 371 (1839) that, in partial payments on a debt, each payment is applied first to finance charge and any remainder reduces the principal. Under this rule, accrued but unpaid finance charge cannot be added to the principal and interest cannot be compounded.

(22) [(20)] Vehicle--A motor vehicle as defined by Texas Finance Code, §348.001(4).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2009.

TRD-200903692

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: October 4, 2009

For further information, please call: (512) 936-7621

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## SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

### 7 TAC §84.201

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §84.201, concerning Time Price Differential, relating to the regulation of motor vehicle retail installment sales.

The purpose of these amendments is to implement House Bill 2438 (HB 2438) as enacted by the 81st Texas Legislature regarding the disclosure of equity and trade-in information and to make technical corrections.

Due to increasing consumer complaints and legislation considered during the 2007 session, the House Committee on Financial Institutions conducted an interim study regarding motor vehicle installment sales, including two key issues: the financing of negative equity and the retirement of existing debt on a trade-in motor vehicle. Itemization of negative equity under current law has led to confusion among consumers. Concerning the payoff of trade-ins, without an explicit legal requirement for the retail seller to timely pay off trade-in vehicles, late payments and defaults have damaged consumers' credit reports through no fault of their own. With the enactment of HB 2438, the 81st Texas Legislature amended Chapter 348 of the Texas Finance Code in order to address these issues.

The amendments to §84.201 are technical in nature. The changes to §84.201(d)(1)(A), (d)(2)(A), and (d)(3)(A) update the internal references to definitions as renumbered in §84.102 (see separate proposal in this issue of the *Texas Register*). To implement the statutory change enacted by HB 2438 that 16 days now constitutes a month (as opposed to 15 days), the time price differential calculations have been revised in §84.201(d)(2)(B) and (d)(3)(B).

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of administering the amendments.

For each year of the first five years the amendments are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will implement recent legislative concepts in order to provide greater clarity. This greater clarity will bring stability to the industry from a number of standpoints including that any entity that operates within the parameters of the rules will be protected from litigation brought under the penalty provisions of Subtitle B of Title 4 (Texas Finance Code, Chapter 349). Additional public benefits resulting from the proposed amendments will be consistency in the financing of motor vehicles, enhanced protection for consumers, and the availability of uniform, reliable procedures for motor vehicle sales finance licensees.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to lau-

rie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed amendments are published in the *Texas Register*. At the conclusion of the 31st day after the proposed amendments are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

Regarding statutory authority from recent legislation for particular provisions, the amendments relating to disclosure of equity and trade-in information are proposed under Texas Finance Code, §348.0091 (Acts 2009, 81st Leg.), which authorizes the commission to adopt a standard form for the disclosure of the equity in a retail buyer's trade-in motor vehicle.

In reference to all of the amendments, they are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 348.

*§84.201. Time Price Differential.*

(a) - (c) (No change.)

(d) Method of calculation.

(1) Regular payment contract using sum of the periodic balances method. The time price differential charge is computed using the add-on rates authorized by Texas Finance Code, §348.104 or the alternative time price differential rate authorized by Texas Finance Code, §348.105 converted to an equivalent add-on rate per \$100 per annum.

(A) Base time price differential charge. The base time price differential charge is determined by multiplying the principal balance subject to a finance charge, as defined by §84.102(13) [§84.102(11)] of this title (regarding Definitions), by the applicable add-on rate per \$100 per year for the corresponding term of the contract. If the retail installment contract is payable for a period that is shorter or longer than a year or is for an amount that is less or greater than \$100, the amount of the time price differential charge is decreased or increased proportionately.

(B) - (D) (No change.)

(2) Scheduled installment earnings method. The scheduled installment earnings method can be used for both regular and irregular payment contracts.

(A) Maximum time price differential. The maximum time price differential charge is computed by applying the applicable maximum daily rate to the unpaid principal balance subject to a finance charge, as defined by §84.102(13) [§84.102(11)] of this title, as if each payment will be made on its scheduled installment date. A payment received before or after the due date does not affect the amount of the scheduled reduction in the unpaid principal subject to a finance charge. The computation of the time price differential must comply with the U.S. Rule as defined by §84.102(21) [§84.102(19)] of this title.

(B) Maximum annualized daily rate.

(i) - (iii) (No change.)

(iv) Irregular payment contract effective rate. On a retail installment sales contract that is an irregular payment contract, the highest effective rate is determined by taking the closest monthly effective rate as shown in Figure: 7 TAC §84.201(d)(2)(B)(iii) assuming

that the contract was payable in substantially equal successive monthly installments beginning one month from the date of the contract.

(I) (No change.)

(II) If the results of subclause (I) of this clause are exactly .5333 [halfway] or more between the two monthly periods, the closest monthly period is rounded up to the next monthly period. For example, if the closest monthly period is determined to be 14.5333 [14.50] months, the maximum annualized daily rate is the effective rate for 15 months.

(III) If the results of subclause (I) of this clause are less than halfway between the two monthly periods, the closest monthly period is rounded down to the previous monthly period. For example, if the closest monthly period is determined to be 14.50 [14.49] months, the maximum annualized daily rate is the effective rate for 14 months.

(C) - (D) (No change.)

(3) True daily earnings method. The true daily earnings method can be used for both regular and irregular payment contracts.

(A) Maximum time price differential. The maximum time price differential charge is computed by applying the applicable daily rate to the unpaid principal balance subject to a finance charge, as defined by §84.102(13) [§84.102(11)] of this title. The computation of the time price differential must comply with the U.S. Rule as defined by §84.102(21) [§84.102(19)] of this title. The earned time price differential charge is computed as follows:

(i) - (ii) (No change.)

(B) Maximum annualized daily rate.

(i) - (iii) (No change.)

(iv) Irregular payment contract effective rate. On a retail installment sales contract that is an irregular payment contract, the highest effective rate is determined by taking the closest monthly effective rate as shown in Figure: 7 TAC §84.201(d)(2)(B)(iii) assuming that the contract was payable in substantially equal successive monthly installments beginning one month from the date of the contract.

(I) (No change.)

(II) If the results of subclause (I) of this clause are exactly .5333 [halfway] or more between the two monthly periods, the closest monthly period is rounded up to the next monthly period. For example, if the closest monthly period is determined to be 14.5333 [14.50] months, the maximum annualized daily rate is the effective rate for 15 months.

(III) If the results of subclause (I) of this clause are less than halfway between the two monthly periods, the closest monthly period is rounded down to the previous monthly period. For example, if the closest monthly period is determined to be 14.50 [14.49] months, the maximum annualized daily rate is the effective rate for 14 months.

(C) - (E) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200903693

Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Earliest possible date of adoption: October 4, 2009  
For further information, please call: (512) 936-7621



## 7 TAC §84.204

The Finance Commission of Texas (commission) proposes new §84.204, concerning Disclosure of Equity in Retail Buyer's Trade-in Motor Vehicle.

Due to increasing consumer complaints and legislation considered during the 2007 session, the House Committee on Financial Institutions conducted an interim study regarding motor vehicle installment sales, including two key issues: the financing of negative equity and the retirement of existing debt on a trade-in motor vehicle. Itemization of negative equity under current law has led to confusion among consumers. Concerning the payoff of trade-ins, without an explicit legal requirement for the retail seller to timely pay off trade-in vehicles, late payments and defaults have damaged consumers' credit reports through no fault of their own.

With the enactment of House Bill 2438 (HB 2438), the 81st Texas Legislature amended Chapter 348 of the Texas Finance Code in order to address these concerns. Among other things, HB 2438 adds §348.0091 to the Texas Finance Code, which provides that the commission adopt a standard disclosure form by rule. The purpose of the new rule and its accompanying form is to implement HB 2438 regarding disclosure of equity in a retail buyer's trade-in motor vehicle. The rule provides a standard form for the disclosure of equity that must be provided to the retail buyer before accepting a trade-in motor vehicle for a motor vehicle being sold under a retail installment sales contract.

Section 84.204(a) outlines the purpose of the new rule and specifies that delivery of the new form must occur before accepting a trade-in motor vehicle.

Section 84.204(b) states that the disclosure of equity standard form must contain the required elements as provided in Texas Finance Code, §348.0091(c).

Subsections (c), (d), (e), and (f) relate to technical requirements for the disclosure of equity standard form. In order, these subsections cover the following requirements: the disclosure must fit on a single page, must be in an easily readable font, must be set in an easily readable typeface, and must be printed in a minimum typeface size of 11 point.

Section 84.204(g) clarifies that in a contract involving co-buyers, the signature of one co-buyer is sufficient to verify delivery of the disclosure form.

Section 84.204(h) contains the figure for the required disclosure of equity standard form.

Section 84.204(i) outlines the limited permissible changes that may be made to the standard form.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of administering the rule.

Commissioner Pettijohn has also determined that for each year of the first five years the new rule is in effect the public benefit

anticipated will be clarification of the requirements for disclosure of equity in trade-in motor vehicles and the availability of a standard form for use in these transactions. It is the agency's belief that the clarity of the proposed rule and standard form will benefit both the motor vehicle sales finance industry and retail buyers.

The required disclosure of equity standard form is mandated by Texas Finance Code, §348.0091, as contained in HB 2438. There may be some nominal costs to licensees in order to comply with the new statutory provisions, such as expenses related to creating and maintaining this single-page form and employee training to implement the standard form. Any requirements are imposed by the Texas Legislature through the enactment of HB 2438 and are not a result of the proposed new rule. Thus, aside from the costs required by the new statutory provisions, the agency does not anticipate any additional costs to or effects on persons who are required to comply with the new rule as proposed. In addition, under present law, licensees should already be documenting the majority of the trade-in vehicle information included on the standard form.

This rule is required by legislative mandate. The agency is not aware of any adverse economic effect on small or micro-businesses resulting from this proposal. But in order to obtain more complete information concerning the economic effect of the new rule, the agency invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses.

Comments on the proposed new rule may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to [laurie.hobbs@occc.state.tx.us](mailto:laurie.hobbs@occc.state.tx.us). To be considered, a written comment must be received on or before the 31st day after the date the new rule is published in the *Texas Register*. At the conclusion of the 31st day after the proposed rule is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The new rule is proposed under Texas Finance Code, §348.0091 (Acts 2009, 81st Leg.), which authorizes the commission to adopt a standard form for the disclosure of the equity in a retail buyer's trade-in motor vehicle. The new rule is also proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 348.

### §84.204. Disclosure of Equity in Retail Buyer's Trade-in Motor Vehicle.

(a) Purpose and delivery. The purpose of this section is to provide a standard form for the disclosure of equity that a retail seller must provide to the retail buyer before accepting a trade-in motor vehicle for a motor vehicle sold under a retail installment sales contract. This section prescribes the form and content of the standard form under Texas Finance Code, §348.0091.

(b) Required elements. A disclosure of equity standard form to be provided to the retail buyer before accepting a trade-in motor vehicle for a motor vehicle sold under a retail installment sales contract must contain the required elements as provided in Texas Finance Code, §348.0091(c).

(c) Single page required. The disclosure of equity standard form must fit on one standard-size sheet of paper (8 1/2 by 11 inches).

(d) Font. The disclosure of equity standard form must be printed in an easily readable font and type size. If other state or federal law requires a different type size for a specific disclosure or contractual provision, the type size specified by the other law should be used.

(e) Typeface. The text of the disclosure of equity standard form must be set in an easily readable typeface. Typefaces considered to be readable include: Times New Roman, Scala, Caslon, Century Schoolbook, Helvetica, and Garamond.

(f) Typeface size. Typeface size is referred to in points. Because different typefaces in the same point size are not of equal size, typeface is not strictly defined but is expressed as a minimum size in the Times New Roman typeface for visual comparative purposes. Generally, the typeface for the text of the disclosure of equity standard form must be at least as large as 11 point in the Times New Roman typeface. A point is generally viewed as 1/72nd of an inch.

(g) Co-buyers. If the motor vehicle being sold under a retail installment sales contract is being purchased by co-buyers, the signature of one co-buyer will verify delivery of a disclosure under this section.

(h) Required standard form. The required disclosure of equity standard form under Texas Finance Code, §348.0091 to be provided to the retail buyer before accepting a trade-in motor vehicle for a motor vehicle sold under a retail installment sales contract is presented in the following figure.

Figure: 7 TAC §84.204(h)

(i) Permissible changes. A retail seller must use the required disclosure of equity standard form, but may consider making only limited technical changes in the disclosure paragraph required by Texas Finance Code, §348.0091(c)(1)(H), as provided by the following exclusive list:

(1) substituting the following for the words "the dealer":

(A) the retail seller's name; or

(B) the pronoun "we";

(2) substituting the following words for the pronoun "you":

(A) "the buyer";

(B) "the retail buyer"; or

(C) "the retail buyer(s)";

(3) substituting the article "the" for the pronoun "your";

(4) appropriate changes to verbs in order to maintain proper grammar.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2009.

TRD-200903690

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: October 4, 2009

For further information, please call: (512) 936-7621



## SUBCHAPTER C. INSURANCE AND DEBT CANCELLATION AGREEMENTS

### 7 TAC §§84.301, 84.302, 84.308

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §84.301, concerning Definitions, and to §84.302, concerning Authorized Credit Insurance and Debt Cancellation Agreements, and proposes new 7 TAC §84.308, concerning Debt Cancellation Agreements for Total Loss or Theft of Ordinary Vehicle, offered in connection with motor vehicle retail installment sales contracts.

Debt cancellation agreements were authorized to be offered as part of consumer loans in 2003, but at that time the legislature did not address the sale of these products with regard to motor vehicle retail installment sales. With the enactment of Senate Bill (SB) 1966, the 81st Texas Legislature amended the Texas Finance Code to allow the sale of debt cancellation agreements in connection with Chapter 348 retail installment sales contracts, with certain limitations and restrictions. Specifically, the Texas Legislature added §348.124 to the Texas Finance Code and amended §348.001 (adding a definition of "debt cancellation agreement"), §348.005 (authorizing a fee for debt cancellation agreements as an itemized charge), and §348.208 (conforming changes).

During the 2009 legislative session, the Texas Legislature also passed SB 1965 relating to the regulation of retail installment sales contracts for commercial vehicles. Certain provisions within Chapter 348 of the Texas Finance Code are not applicable to transactions involving commercial vehicles. Furthermore, these consumer-oriented provisions prevent commercial buyers from contracting for services related to commercial uses that would not be relevant to a consumer purchase. The intent of SB 1965 is to exempt retail installment sales contracts for commercial vehicles from certain provisions of the Texas Finance Code. Among other things, SB 1965 adds §348.0051 which outlines additional charges permitted for commercial vehicles, including a provision allowing fees for debt cancellation agreements.

As a note of background regarding this proposal, the debt cancellation products authorized by SB 1965 and SB 1966 are offered by diverse market segments that do not have the same interests or needs. The agency learned of the specialized perspectives of franchised motor vehicle dealers, independent motor vehicle dealers, gap waiver providers, as well as insurance companies with regard to debt cancellation agreements. The agency decided that it would be in the best interest of consumers as well as these diverse market providers to gather information from interested stakeholders in order to prepare an informed and well-balanced proposal for the commission. Accordingly, the agency distributed rule drafts to the growing list of stakeholders for specific early or pre-comment prior to the presentation of the rules to commission. The agency believes that this early participation of stakeholders in the rulemaking process has greatly benefited the resulting proposal.

The purpose of the amendments to §84.301 and §84.302 is to provide clarifying and conforming changes relating to the different types of debt cancellation products that may be offered in connection with motor vehicle installment sales contracts. The changes serve to harmonize the implementation of SB 1965 and SB 1966 through the use of common terms in 7 TAC Chapter 84. Additionally, some of the amendments provide clarification as to the types of products authorized for transactions involving ordinary vehicles, i.e. those used primarily for personal, family, or



household use, as opposed to commercial vehicles. The term "ordinary vehicle" is currently used in §84.202 and §84.808 and has been utilized here for consistency purposes. Definitions of both "ordinary vehicle" and "commercial vehicle" are being proposed for addition to §84.102 in a separate proposal in this issue of the *Texas Register*.

The amendments to §84.301 add definitions delineating the particular types of debt cancellation agreements that may be offered with Chapter 348 contracts. The proposed new definitions outline the scope of authorized debt cancellation products in the following situations: the death of the retail buyer (subsection (a)), the disability of the retail buyer (subsection (b)), and the total loss or theft of the motor vehicle (subsection (c)). The first sentences in proposed subsections (a) and (b) are modeled after language in SB 1965, as these products are only authorized to be offered on commercial vehicles. The definition proposed in §84.301(c)(1) for ordinary vehicles closely tracks the definition found in Texas Finance Code, §348.001(1-a), as enacted by SB 1966. For commercial vehicles, proposed §84.301(c)(2) is modeled after the language found in Texas Finance Code, §348.0051(a)(4), as enacted by SB 1965. For the definitions proposed in new §84.301(a), (b), and (c), parallel language is included that explains to which parties the debt cancellation fee may be paid. In addition, the two existing definitions under §84.301 have been relettered accordingly along with other technical corrections.

Proposed new §84.301(f) contains two definitions outlining when a total loss or theft occurs regarding debt cancellation agreements for total loss or theft of an ordinary vehicle. These definitions are proposed to coordinate with new §84.308 by explaining what total loss or theft means in connection with two specific situations: (1) where insurance coverage is part of the retail buyer's responsibility to the holder, or (2) where the holder bears complete responsibility for the amount owed.

In reference to §84.302, the title and purpose provision in subsection (a) include proposed amendments incorporating the topic of debt cancellation to the current provisions concerning authorized credit insurance. In addition, throughout §84.302, descriptive tag lines have been added at the beginning of each subsection for consistency purposes.

Section 84.302(g) regarding authorized insurance and surplus lines insurance companies has been subdivided into two paragraphs in order to accommodate the products authorized for ordinary vehicles as opposed to commercial vehicles. Proposed §84.302(g)(1) contains the existing language relating to ordinary vehicles, whereas paragraph (2) contains new language for commercial vehicles. Similarly, subsection (h) concerning debt cancellation agreements has also been separated into two paragraphs. In particular, proposed §84.302(h)(1) eliminates the prohibition on debt cancellation agreements for the total loss or theft of an ordinary vehicle as authorized by SB 1966. Both subsection (h)(1) and (h)(2) include statutory references relating to the respective provisions for debt cancellation agreements authorized for ordinary and commercial vehicles.

The purpose of proposed new §84.308 is to outline the parameters under which a retail seller may provide a debt cancellation agreement for total loss or theft of an ordinary vehicle in connection with a Chapter 348 retail installment sales contract. One of the principal consumer protections in SB 1966 is that the amount charged for a debt cancellation agreement must be reasonable; the rule establishes a maximum reasonable fee structure accompanied by certain limitations that may be addressed within a debt

cancellation agreement. The individual purposes of each new subsection are provided in the following paragraphs.

Section 84.308(a) provides the purpose of the rule, as described in the first sentence of the preceding paragraph.

Section 84.308(b) clarifies the disclosure requirements of a debt cancellation agreement, including provisions relating to delivery and multiple applicants.

Section 84.308(c) outlines the provisions that are authorized to be included in a debt cancellation agreement. Subsection (c) is divided into two distinct situations where debt cancellation agreements may be offered involving total loss or theft: (1) where insurance coverage is part of the retail buyer's responsibility to the holder, or (2) where the holder bears complete responsibility for the amount owed. From the pre-comment information gathered by the agency, it became apparent that these two sets of circumstances required separate treatment under the new rule. With this bifurcated approach, the agency intends to accommodate different market segments offering debt cancellation agreements while maintaining appropriate consumer protections.

Proposed paragraphs (1) and (2) of subsection (c) each contain an exclusive list of provisions that may be included in a debt cancellation agreement offered in conjunction with the respective situation, i.e. those involving insurance coverage or those involving the holder bearing complete responsibility. In particular, §84.308(c)(1)(B) and (c)(2)(B) contain lists of allowable exclusions for each situation. These exclusions were compiled from review of related insurance products and from input provided by stakeholders.

Section 84.308(d) discusses the content and timing requirements under which a copy of the debt cancellation agreement must be provided to the retail buyer.

Section 84.308(e) and its accompanying figures explain the allowable fees that can be charged for debt cancellation agreements as well as the financing of those fees. Continuing with the bifurcated approach, subsection (e) is divided into two paragraphs and figures to appropriately address the maximum fees that are deemed reasonable for each situation. The agency received numerous pre-comments from stakeholders concerning allowable fees, not only regarding actual amounts but also relating to calculation approaches and structure. With the proposed rate structure, the agency has attempted to achieve an appropriate balance that is reasonable to consumers while providing a certain degree of profitability to licensees.

Provisions common to both of the rate schedules contained in figures §84.308(e)(1) and §84.308(e)(2) include: a structure of eight tiers, the amount of the fee being based on the amount financed, fee adjustment permitted to the nearest whole dollar, and that the fee may be included in the amount financed and a finance charge may be charged on that fee. Additionally, both rate schedules set a minimum fee of \$20 for a debt cancellation agreement.

Section 84.308(f) outlines how unearned debt cancellation agreement fees must be refunded. Paragraph (1) states that a refunding method that is at least as favorable to the retail buyer as the Rule of 78s must be used and that in the event of a cancelled debt, the fee paid for the debt cancellation agreement is fully earned and no refund is due. Proposed §84.308(f)(2) explains how the cancellation date must be determined. Paragraph (3) states that a refund credit may be rounded to the nearest whole dollar, and paragraph (4) provides that a refund

credit of less than \$1.00 is not required. The \$1.00 figure has been used in §84.308(f)(4) in order to maintain consistency with the refunding requirements of Texas Finance Code, §348.120. Proposed §84.308(f)(5) provides that a retail buyer must receive a complete refund for the debt cancellation fee if the debt cancellation agreement is cancelled within 30 days from the date of the contract or the issuance of the debt cancellation agreement, whichever is later. In addition, paragraph (5) also states that a retail buyer may not cancel the debt cancellation agreement and then receive any benefits under the agreement.

Section 84.308(g) explains that a licensee must comply with the payment terms of a debt cancellation agreement within 60 days of receiving a debt cancellation request form and all necessary information needed by the licensee to process the request.

Section 84.308(h) delineates the allowable methods of calculating the amount owed under a debt cancellation agreement, including two separate sets of provisions to maintain the rule's bifurcated approach.

Section 84.308(i) discusses the proper calculations of refunds for insurance and other cancelable items, and for time price differential. All refunds should be calculated as of the date of loss.

Section 84.308(j) outlines the practices that are prohibited by licensees providing debt cancellation agreements.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments and new rule are in effect, there will be no fiscal implications for state or local government as a result of administering the rule revisions.

For each year of the first five years the amendments and new rule are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposal will be increased stability in the industry by providing uniform parameters and standards which can have the effect of lowering the cost of credit. Because the new rule implements the "reasonable" standard in the statute, retail sellers will have more confidence in offering debt cancellation agreements.

Licensees will have the option of not offering debt cancellation agreements, in which case, there will be no fiscal implications for those licensees. For licensees who opt to provide debt cancellation agreements in connection with their motor vehicle retail installment sales contracts, the fees charged in conjunction with the debt cancellation agreements are anticipated to cover the costs associated with creating and maintaining the agreements. Thus, due to the fees that licensees may charge offsetting the costs of the debt cancellation agreements, a neutral cost will result to persons who are required to comply with the proposal. There will be no effect on individuals required to comply with the amendments and new rule as proposed.

The agency is not aware of any adverse economic effect on small or micro-businesses resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule revisions, the agency invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses.

Comments on the proposed amendments and new rule may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written

comment must be received on or before the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of the 31st day after the proposed amendments and new rule are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The amendments and new rule are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. The rule revisions are also proposed under Texas Finance Code, §348.513, which grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter. Additionally, the amendments concerning ordinary vehicles are proposed under Texas Finance Code, §348.0015, as enacted by SB 1965 (Acts 2009, 81st Leg.), which authorizes the commission to determine by rule a motor vehicle that is of a type typically used for personal, family, or household use.

The statutory provisions affected by the proposed amendments and new rule are contained in Texas Finance Code, Chapter 348.

#### §84.301. Definitions.

(a) Debt Cancellation Agreement for Death of Retail Buyer--The agreement between the retail buyer and the retail seller or the holder of a retail installment sales contract in which a holder agrees to waive all or part of the amount owed under the retail installment sales contract in the event of the death of the retail buyer. The holder includes any retail seller that does not assign its retail installment sales contracts to another entity. The fee amount of the debt cancellation agreement may be paid to the retail seller, holder, or any other party designated by the retail seller or holder.

(b) Debt Cancellation Agreement for Disability of Retail Buyer--The agreement between the retail buyer and the retail seller or the holder of a retail installment sales contract in which a holder agrees to waive one or more payments owed under the retail installment sales contract in the event of the disability of the retail buyer. The holder includes any retail seller that does not assign its retail installment sales contracts to another entity. The fee amount of the debt cancellation agreement may be paid to the retail seller, holder, or any other party designated by the retail seller or holder.

(c) Debt Cancellation Agreement for Total Loss or Theft of Motor Vehicle.

(1) Ordinary vehicles. For a retail installment sales transaction involving an ordinary vehicle, a debt cancellation agreement for total loss or theft of a motor vehicle is a retail installment sales contract provision or a contractual arrangement modifying a retail installment sales contract term under which a retail seller or holder agrees to cancel all or part of an obligation of the retail buyer to repay an extension of credit from the retail seller or holder on the occurrence of the total loss or theft of the motor vehicle that is the subject of the retail installment sales contract but does not include an offer to pay a specified amount on the total loss or theft of the motor vehicle. For purposes of this section and §84.308 of this title only, the holder includes any retail seller that does not assign its retail installment sales contracts to another entity. The fee amount of the debt cancellation agreement may be paid to the retail seller, holder, or any other party designated by the retail seller or holder.

(2) Commercial vehicles. For a retail installment sales transaction involving a commercial vehicle, a debt cancellation agreement for total loss or theft of a motor vehicle is a retail installment sales contract provision or agreement under which a holder agrees to waive all or part of the difference between the amount owed under a retail installment sales contract and the amount paid under a physical damage insurance policy maintained by the retail buyer or its assign

in the event the motor vehicle is a total loss. The holder includes any retail seller that does not assign its retail installment sales contracts to another entity. The fee amount of the debt cancellation agreement may be paid to the retail seller, holder, or any other party designated by the retail seller or holder.

(d) ~~[(a)]~~ Prepaid Maintenance Agreement--A maintenance agreement as defined in Texas Occupations Code, §1304.004.

(e) ~~[(b)]~~ Service Contract--A service contract as defined ~~[Has the meaning assigned]~~ in Texas Occupations Code, §1304.003~~[-]~~. Pursuant to Texas Occupations Code, §1304.004, a prepaid maintenance agreement is a type of service contract.

(f) Total Loss or Theft for Debt Cancellation Agreement for Total Loss or Theft of an Ordinary Vehicle.

(1) Insurance coverage part of retail buyer's responsibility to holder. Under §84.308(e)(1) of this title (relating to Debt Cancellation Agreements for Total Loss or Theft of Ordinary Vehicle), a total loss means direct and accidental physical damage loss of or damage to the covered motor vehicle which results in a determination by the retail buyer's physical damage insurer that the total cost of the repair of the covered motor vehicle is greater than or equal to the covered motor vehicle. The value of the covered motor vehicle must be determined by an established retail value guide as of the date immediately prior to loss. Under §84.308(e)(1) of this title, theft means the covered motor vehicle is stolen and deemed to be not recoverable.

(2) Holder bears complete responsibility for amount owed. Under §84.308(e)(2) of this title, a total loss means direct or accidental physical damage loss of or damage to the motor vehicle subject to the debt cancellation agreement which results in a determination by the holder of the retail installment sales contract that the total cost of the repair is greater than or equal to the retail value of the motor vehicle. The value of the motor vehicle subject to the debt cancellation agreement must be determined by an established retail value guide as of the date immediately prior to loss. Under §84.308(e)(2) of this title, theft means the motor vehicle subject to the debt cancellation agreement is stolen and deemed to be not recoverable.

§84.302. Authorized Credit Insurance and Debt Cancellation Agreements.

(a) Purpose. This section only applies to a motor vehicle retail installment sales transaction under Texas Finance Code, Chapter 348 where a charge for insurance or debt cancellation is included in the balance due under the retail installment sales contract. This section does not apply to insurance sold outside of the retail installment sales transaction.

(b) Authorized credit insurance. Authorized credit insurance includes credit life, credit accident and health insurance, credit involuntary unemployment insurance, and dual-interest gap insurance. The retail seller may but is not required to offer the authorized credit insurance products described in this section.

(c) Decreasing term coverage for credit life, credit accident and health, and involuntary unemployment insurance. Credit life insurance, credit accident and health insurance, and involuntary unemployment insurance written in connection with a Texas Finance Code, Chapter 348 motor vehicle retail installment sales contract must be decreasing term insurance.

(d) Lawful rates and terms for credit life and credit accident and health insurance. Credit life insurance and credit accident and health insurance must be written in compliance with Texas Insurance Code, Chapters 1131 and 1153, and any regulations issued by the Texas Department of Insurance under the authority of those provisions.

(e) Lawful rates and terms for involuntary unemployment insurance. Involuntary unemployment insurance must be written in compliance with Texas Insurance Code, Chapter 3501, and any regulations issued by the Texas Department of Insurance under the authority of that chapter.

(f) Lawful rates and terms for dual-interest gap insurance. Dual-interest gap insurance, authorized by Texas Finance Code, §348.208(b)(4), must be written at rates and on forms set and filed in accordance with Texas Insurance Code, Chapters 2251 and 2301, and any regulations issued by the Texas Department of Insurance under the authority of those provisions.

(g) Authorized insurance and surplus lines insurance companies.

(1) Ordinary vehicles. For retail installment sales transactions involving ordinary vehicles, credit ~~[Credit]~~ insurance must be procured from an insurance company authorized to do business in this state. Surplus lines insurance companies are not authorized to offer credit insurance on a Chapter 348 motor vehicle retail installment sales contract.

(2) Commercial vehicles. For retail installment sales transactions involving commercial vehicles, credit insurance must be procured from an insurer that is authorized to do business in this state or an eligible surplus lines insurer.

(h) Debt cancellation agreements. Debt cancellation~~[- debt suspension, and gap waiver]~~ agreements are not credit insurance.

(1) Ordinary vehicles. For retail installment sales transactions involving ordinary vehicles, debt ~~[Debt]~~ cancellation~~[- debt suspension, and gap waiver]~~ agreements that cancel all or part of the retail buyer's obligation to repay the retail installment sales contract based upon the occurrence of death, disability, or unemployment of the retail buyer are not authorized to be sold or written with a Chapter 348 motor vehicle retail installment sales contract. A debt cancellation agreement written in compliance with Texas Finance Code, §348.124 and 7 TAC §84.308 for the total loss or theft of a motor vehicle may be offered or procured on a Chapter 348 motor vehicle retail installment sales contract.

(2) Commercial vehicles. For retail installment sales transactions involving commercial vehicles, a debt cancellation agreement written in compliance with Texas Finance Code, §348.0051 may only be offered or procured on a Chapter 348 motor vehicle retail installment sales contract if the debt cancellation agreement involves the cancellation of all or part of the retail buyer's obligation to repay the retail installment sales contract based upon the occurrence of death or disability of the retail buyer or the total loss or theft of the motor vehicle.

§84.308. Debt Cancellation Agreements for Total Loss or Theft of Ordinary Vehicle.

(a) Purpose. The Texas Finance Code allows a debt cancellation agreement to be included in a motor vehicle retail installment sales contract involving an ordinary vehicle subject to Texas Finance Code, Chapter 348 as an itemized charge. This section outlines the parameters under which a retail seller or holder may provide a debt cancellation agreement for total loss or theft of an ordinary vehicle in connection with a Chapter 348 retail installment sales contract.

(b) Disclosure under Texas Finance Code, §348.124.

(1) Delivery. A licensee must provide the retail buyer with a notice that a debt cancellation agreement for total loss or theft of an ordinary vehicle is not required in order to purchase the motor vehicle. This notice can be provided to the retail buyer either in a debt cancellation agreement for total loss or theft of an ordinary vehicle or in a

separate disclosure. The notice must not be in the retail installment sales contract. A retail seller or holder may request that the retail buyer authenticate the debt cancellation agreement for total loss or theft of an ordinary vehicle disclosure acknowledging the applicant's receipt of the disclosure or notice. A licensee may rely upon a verifiable procedure to show that a debt cancellation agreement for total loss or theft of an ordinary vehicle notice was provided to an applicant.

(2) Multiple applicants. In the case of multiple applicants, it is only necessary for the licensee to deliver the debt cancellation agreement for total loss or theft of an ordinary vehicle notice to one applicant.

(c) Authorized debt cancellation agreement for total loss or theft of an ordinary vehicle provisions. A debt cancellation agreement under this section must only contain provisions or exclusions from one of the following two paragraphs.

(1) Debt cancellation agreement for total loss or theft of ordinary vehicle that includes insurance coverage as part of retail buyer's responsibility to holder:

(A) a statement that explains the calculation of the unpaid net balance;

(B) a statement that excludes loss or damage as a result of one or more of the following:

(i) an act occurring after the original maturity date or date of holder's acceleration of the retail installment sales contract;

(ii) any dishonest, fraudulent, criminal, illegal or intentional act of the retail buyer that directly results in the total loss;

(iii) conversion, embezzlement, or secretion by any person in lawful possession of the motor vehicle;

(iv) lawful confiscation by an authorized public official;

(v) the operation, use, or maintenance of the motor vehicle in any race or speed contest;

(vi) war, whether or not declared, invasion, civil war, insurrection, rebellion, revolution, or act of terrorism;

(vii) normal wear and tear, freezing, mechanical or electrical breakdown or failure;

(viii) use of the motor vehicle for primarily commercial purposes;

(ix) damage that occurs after the motor vehicle has been repossessed;

(x) damage to the motor vehicle prior to the purchase of the debt cancellation agreement for total loss or theft of an ordinary vehicle;

(xi) unpaid insurance premiums, salvage, towing, and storage charges relating to the motor vehicle;

(xii) damage related to any personal property attached to or within the vehicle;

(xiii) damages associated with falsification of documents by any person not associated with the retail seller or the debt cancellation provider;

(xiv) any unpaid debt resulting from exclusions in the retail buyer's primary physical damage coverage not included in the debt cancellation agreement;

(xv) abandonment of the motor vehicle by the retail buyer only if the retail buyer voluntarily discards, or leaves behind, or otherwise relinquishes possession of the motor vehicle to the extent that the relinquishment shows intent to forsake and desert the motor vehicle so that the motor vehicle may be appropriated by any other person;

(C) a statement that the retail buyer is required to notify the licensee within 90 days of any potential loss under the debt cancellation agreement for total loss or theft of an ordinary vehicle;

(D) a statement that requests the retail buyer to provide or complete the following documents and provide those documents to the holder:

(i) a debt cancellation request form;

(ii) proof of loss and settlement payment from the retail buyer's primary comprehensive, collision, or uninsured/underinsured motorist policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle;

(iii) verification of the retail buyer's primary insurance deductible; and

(iv) a copy of the police report, if any, filed in connection with the total loss or theft of the motor vehicle;

(E) a statement that the holder is responsible for any amount due the retail buyer under the debt cancellation agreement for total loss or theft of an ordinary vehicle;

(F) a statement naming the refunding method used by the licensee to calculate refunds under subsection (f) of this section;

(G) a statement explaining how the holder of the retail installment sales contract will calculate the amount owed under the debt cancellation agreement for total loss or theft of an ordinary vehicle that is in accordance with subsection (h) of this section;

(H) a statement that the debt cancellation agreement is not required to obtain credit and will not be a factor in the credit approval process.

(2) Debt cancellation agreement for total loss or theft of ordinary vehicle in which holder bears complete responsibility for amount owed after total loss or theft:

(A) a statement that the holder will cancel the remaining amount owed by the retail buyer on the date of the total loss or theft of the motor vehicle;

(B) a statement that excludes loss or damage as a result of one or more of the following:

(i) an act occurring after the original maturity date or date of holder's acceleration of the retail installment sales contract;

(ii) any dishonest, fraudulent, criminal, illegal or intentional act of the retail buyer that directly results in the total loss;

(iii) conversion, embezzlement, or secretion by any person in lawful possession of the motor vehicle;

(iv) lawful confiscation by an authorized public official;

(v) the operation, use, or maintenance of the motor vehicle in any race or speed contest;

(vi) war, whether or not declared, invasion, civil war, insurrection, rebellion, revolution, or act of terrorism;

(vii) normal wear and tear, freezing, mechanical or electrical breakdown or failure;

(viii) use of the motor vehicle for primarily commercial purposes;

(ix) loss that occurs after the motor vehicle has been repossessed;

(x) damage to the motor vehicle prior to the purchase of the debt cancellation agreement for total loss or theft of an ordinary vehicle;

(xi) damage related to any personal property attached to or within the vehicle;

(xii) damages associated with falsification of documents by any person not associated with the retail seller or the debt cancellation provider;

(xiii) abandonment of the motor vehicle by the retail buyer only if the retail buyer voluntarily discards, or leaves behind, or otherwise relinquishes possession of the motor vehicle to the extent that the relinquishment shows intent to forsake and desert the motor vehicle so that the motor vehicle may be appropriated by any other person;

(C) a statement that the retail buyer is required to notify the licensee within 90 days of any potential loss under the debt cancellation agreement for total loss or theft of an ordinary vehicle;

(D) a statement that requests the retail buyer to provide or complete a debt cancellation agreement for total loss or theft of an ordinary vehicle debt cancellation request form and a copy of the police report, if any, filed in connection with the total loss or theft of the motor vehicle;

(E) a statement that the holder will cancel any amount due the retail buyer under the debt cancellation agreement for total loss or theft of an ordinary vehicle;

(F) a statement naming the refunding method used by the licensee to calculate refunds under subsection (f) of this section;

(G) a statement that the holder may not be named as loss payee on any insurance policy covering the motor vehicle or receive any of the proceeds from an insurance policy on the motor vehicle;

(H) a statement that the holder may not require property insurance on the motor vehicle;

(I) a statement that the debt cancellation agreement is not required to obtain credit and will not be a factor in the credit approval process.

(d) Copy of debt cancellation agreement for total loss or theft of ordinary vehicle provided to retail buyer. If a retail buyer purchases a debt cancellation agreement for total loss or theft of an ordinary vehicle, the licensee must provide the retail buyer, within a reasonable amount of time not to exceed 10 days from the date of the retail installment sales contract, a true and correct copy of the agreement that clearly sets forth:

(1) the name of the retail buyer, and the name, address, and telephone number of the place where requests for debt cancellation are processed;

(2) the amount and term of the debt cancellation agreement for total loss or theft of an ordinary vehicle;

(3) the cost of the debt cancellation agreement for total loss or theft of an ordinary vehicle;

(4) the terms, including the limitations, exclusions and restrictions; and

(5) a statement that the holder will cancel any amount due the retail buyer under the debt cancellation agreement for total loss or theft of an ordinary vehicle substantially similar to the following: "THE HOLDER OF THIS RETAIL INSTALLMENT SALES CONTRACT WILL CANCEL ANY AMOUNTS OWED BY THE RETAIL BUYER UNDER THE RETAIL INSTALLMENT SALES CONTRACT IN THE CASE OF A TOTAL LOSS OR THEFT UNDER THE TERMS OF THIS DEBT CANCELLATION AGREEMENT FOR TOTAL LOSS OR THEFT OF AN ORDINARY VEHICLE."

(e) Fee or rate for debt cancellation agreement for total loss or theft of an ordinary vehicle. The amount of the fee is based upon the amount financed. The fee for a debt cancellation agreement can be adjusted to the nearest whole dollar. The fee may be included in the amount financed and a finance charge may be charged on the fee. The minimum fee for a debt cancellation agreement under this subsection is \$20.

(1) Debt cancellation agreement for total loss or theft of ordinary vehicle that includes insurance coverage as part of retail buyer's responsibility to holder. A licensee may charge a reasonable debt cancellation agreement fee for total loss or theft of an ordinary vehicle. The following figure contains a rate schedule of maximum fees that are deemed to be reasonable for debt cancellation agreements for total loss or theft of an ordinary vehicle that are in compliance with subsection (c)(1) of this section.

Figure: 7 TAC §84.308(e)(1)

(2) Debt cancellation agreement for total loss or theft of ordinary vehicle in which holder bears complete responsibility for amount owed after total loss or theft. The following figure contains a rate schedule of maximum fees that are deemed to be reasonable for debt cancellation agreements for total loss or theft of an ordinary vehicle that are in compliance with subsection (c)(2) of this section.

Figure: 7 TAC §84.308(e)(2)

(f) Refund of unearned debt cancellation agreement fee.

(1) Refunding method. Upon termination of a debt cancellation agreement prior to the scheduled maturity date of a retail installment sales contract, the licensee will provide the retail buyer a refund or credit calculated using a method that is at least as favorable to the buyer as the Rule of 78s. In the event of a cancelled debt under the debt cancellation agreement, the fee paid for the debt cancellation agreement is fully earned and no refund is due.

(2) Cancellation date. The refund of the debt cancellation agreement fee, if any, must be based upon the earlier date of:

(A) the prepayment of the retail installment sales contract in full prior to the original maturity date;

(B) a demand by the licensee for payment in full of the unpaid balance or acceleration;

(C) an authorized event has triggered the debt cancellation agreement;

(D) a request by the retail buyer for cancellation of the unearned debt cancellation agreement fee; or

(E) the denial of a debt cancellation request based on one of the exclusions contained in subsection (c)(1)(B) or (c)(2)(B) of this section.

(3) Rounding of unearned debt cancellation agreement fee. The refund credit for the debt cancellation agreement can be rounded to the nearest whole dollar.

(4) Refund credit less than \$1.00 not required. A refund credit is not required if the amount of the refund credit is less than \$1.00.

(5) Flat cancellation within 30 days. If the retail buyer cancels the debt cancellation agreement within 30 days from the date of the retail installment sales contract or the issuance of the debt cancellation agreement, whichever is later, the licensee will refund the entire debt cancellation agreement fee. A retail buyer may not cancel the debt cancellation agreement and then receive any benefits under the agreement.

(g) Prompt payment under debt cancellation agreement. A licensee must comply with the payment terms of a debt cancellation agreement within 60 days of receiving a debt cancellation request form and all necessary information needed by the licensee to process the request. If the licensee has all of the information that a retail buyer would provide in the completion of a debt cancellation request form, the licensee must comply with the payment terms of the debt cancellation agreement within 60 days of receipt of all the information.

(h) Calculation of amount owed under debt cancellation agreement for total loss or theft of ordinary vehicle. The calculation of the amount owed under this section will be figured in compliance with one of the following methods:

(1) Debt cancellation agreement for total loss or theft of ordinary vehicle that includes insurance coverage as part of retail buyer's responsibility to holder.

(A) If the retail installment sales transaction uses the scheduled installment earnings method or is a regular payment contract using the sum of the periodic balances method, the licensee will calculate the amount owed by:

(i) adding the remaining originally scheduled installments owed by the retail buyer, including any payment that is not more than 15 days past due, on the retail installment sales contract as of the date of loss;

(ii) subtracting the greater of either:

(I) the total loss payment made by the primary insurance carrier; or

(II) the retail value of the motor vehicle as of date of loss as determined by an established retail value guide; and

(iii) subtracting any refunds due as of the date of total loss.

(B) If the retail installment sales contract uses the true daily earnings method, the licensee will calculate the amount owed by:

(i) computing the originally, scheduled principal balance due as of the date of total loss, including any payment that is not more than 15 days past due;

(ii) subtracting the greater of either:

(I) the total loss payment made by the primary insurance carrier; or

(II) the retail value of the motor vehicle as of date of loss as determined by an established retail value guide; and

(iii) subtracting any refunds due as of the date of total loss.

(2) Debt cancellation agreement for total loss or theft of ordinary vehicle in which holder bears complete responsibility for amount owed after total loss or theft. The amount owed on the retail installment sales contract will be the amount due under the debt

cancellation agreement for total loss or theft of an ordinary vehicle as of the date of total loss or theft.

(i) Prepayment of retail installment sales contract by debt cancellation agreement. If the debt cancellation agreement is triggered by the total loss or theft of the motor vehicle, all refunds should be calculated as of the date of loss.

(1) Insurance refunds and other cancelable items. Examples of refunds that should be calculated as of the date of loss include credit life premium, credit accident and health insurance premium, credit involuntary unemployment insurance premium, collateral protection insurance premium, and service contract refunds.

(2) Time price differential refund. If the retail installment sales contract uses the scheduled installment earnings method or is a regular payment contract using the sum of the periodic balances method, the time price differential refund should be calculated as of the date of loss. If the retail installment sales contract uses the true daily earnings method, the licensee should not earn any time price differential charge after the date of loss.

(i) Prohibited practices. A licensee cannot offer a debt cancellation agreement if:

(1) the retail installment sales contract is already protected by gap insurance;

(2) the purchase of the debt cancellation agreement is required for the retail buyer to obtain the extension of credit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7621



## **7 TAC §84.303, §84.305**

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §84.303, concerning Provision of Policy or Certificate, and §84.305, concerning Collateral Protection Insurance, relating to the regulation of motor vehicle retail installment sales.

The purpose of these amendments is to implement Senate Bill 1965 (SB 1965) as enacted by the 81st Texas Legislature regarding commercial vehicles.

During the 2009 legislative session, the Texas Legislature passed SB 1965 relating to the regulation of retail installment sales contracts for commercial vehicles. Certain provisions within Chapter 348 of the Texas Finance Code are not applicable to transactions involving commercial vehicles. Furthermore, these consumer-oriented provisions prevent commercial buyers from contracting for services related to commercial uses that would not be relevant to a consumer purchase. The intent of SB 1965 is to exempt retail installment sales contracts for commercial vehicles from certain provisions of the Texas Finance Code.

Subsection (b) has been added to §84.303 regarding the provision of a policy or certificate to clarify that the section does not

apply to a holder who purchases dual-interest insurance on a Chapter 348 contract involving a commercial vehicle. Similarly, language has been added to §84.305 concerning collateral protection insurance narrowing the applicability to ordinary vehicles. These additions implement SB 1965 by excluding commercial vehicles from both sections.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of administering the amendments.

For each year of the first five years the amendments are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will implement recent legislative concepts in order to provide greater clarity. This greater clarity will bring stability to the industry from a number of standpoints including that any entity that operates within the parameters of the rules will be protected from litigation brought under the penalty provisions of Subtitle B of Title 4 (Texas Finance Code, Chapter 349). Additional public benefits resulting from the proposed amendments will be consistency in the financing of motor vehicles, enhanced protection for consumers, and the availability of uniform, reliable procedures for motor vehicle sales finance licensees.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to [laurie.hobbs@occc.state.tx.us](mailto:laurie.hobbs@occc.state.tx.us). To be considered, a written comment must be received on or before the 31st day after the date the proposed amendments are published in the *Texas Register*. At the conclusion of the 31st day after the proposed amendments are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

Regarding statutory authority from recent legislation for particular provisions, the amendments concerning ordinary vehicles are proposed under Texas Finance Code, §348.0015, as enacted by SB 1965 (Acts 2009, 81st Leg.), which authorizes the commission to determine by rule a motor vehicle that is of a type typically used for personal, family, or household use.

In reference to all of the amendments, they are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 348.

*§84.303. Provision of Policy or Certificate.*

(a) If a retail seller obtains insurance for which a charge is included in a motor vehicle retail installment sales contract under Texas Finance Code, Chapter 348, the retail seller must send or cause to be sent to the retail buyer, within 30 days of the date of the contract, a

properly executed policy or certificate of insurance. The policy or certificate of insurance must clearly set forth:

- (1) the amount of the premium;
- (2) the kind of insurance provided;
- (3) the coverage of the insurance; and
- (4) all terms, including options, limitations, restrictions and conditions of the insurance that has been purchased.

(b) This section does not apply to a holder who purchases dual-interest insurance on a motor vehicle retail installment sales contract involving a commercial vehicle.

*§84.305. Collateral Protection Insurance.*

If a holder of a motor vehicle retail installment sales contract involving an ordinary vehicle arranges for collateral protection insurance and assesses a charge for the insurance to the retail buyer, the holder must comply with the provisions of Texas Finance Code, Chapter 307.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

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## SUBCHAPTER F. LICENSING

### 7 TAC §84.602

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §84.602, concerning Filing of New Application, relating to the regulation of motor vehicle retail installment sales.

The purpose of these amendments is to implement Senate Bill 1965 (SB 1965) as enacted by the 81st Texas Legislature regarding commercial vehicles.

During the 2009 legislative session, the Texas Legislature passed SB 1965 relating to the regulation of retail installment sales contracts for commercial vehicles. Certain provisions within Chapter 348 of the Texas Finance Code are not applicable to transactions involving commercial vehicles. Furthermore, these consumer-oriented provisions prevent commercial buyers from contracting for services related to commercial uses that would not be relevant to a consumer purchase. The intent of SB 1965 is to exempt retail installment sales contracts for commercial vehicles from certain provisions of the Texas Finance Code.

In §84.602(2)(B), clarification has been added, stating that contract forms must only be submitted for transactions involving ordinary vehicles, as per SB 1965. Additionally, an affirmative statement also provides that the applicant does not have to submit retail installment sales contract forms for commercial vehicles.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of administering the amendments.

For each year of the first five years the amendments are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will implement recent legislative concepts in order to provide greater clarity. This greater clarity will bring stability to the industry from a number of standpoints including that any entity that operates within the parameters of the rules will be protected from litigation brought under the penalty provisions of Subtitle B of Title 4 (Texas Finance Code, Chapter 349). Additional public benefits resulting from the proposed amendments will be consistency in the financing of motor vehicles, enhanced protection for consumers, and the availability of uniform, reliable procedures for motor vehicle sales finance licensees.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. In fact, a cost savings is probable for licensees who handle commercial transactions due to the exemptions from providing contract forms in the licensing process. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed amendments are published in the *Texas Register*. At the conclusion of the 31st day after the proposed amendments are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

Regarding statutory authority from recent legislation for particular provisions, the amendments concerning ordinary vehicles are proposed under Texas Finance Code, §348.0015, as enacted by SB 1965 (Acts 2009, 81st Leg.), which authorizes the commission to determine by rule a motor vehicle that is of a type typically used for personal, family, or household use.

In reference to all of the amendments, they are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 348.

#### *§84.602. Filing of New Application.*

An application for issuance of a new motor vehicle sales finance license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the application, and the application must include the following:

- (1) (No change.)
- (2) Other required filings.
  - (A) (No change.)

(B) Contract forms. The applicant must provide information regarding the retail installment sales contract forms it intends to

use for retail installment sales transactions involving ordinary vehicles. The applicant does not have to provide retail installment sales contract forms involving commercial vehicles.

(i) - (ii) (No change.)

(C) (No change.)

(3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

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## SUBCHAPTER G. EXAMINATIONS

### 7 TAC §§84.707 - 84.709

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §§84.707 - 84.709, concerning Files and Records Required, relating to the regulation of motor vehicle retail installment sales.

The purpose of these amendments is to implement recent legislation enacted by the 81st Texas Legislature affecting the regulation of motor vehicle retail installment sales, including the following bills: Senate Bill (SB) 1965 (commercial vehicles), House Bill (HB) 2438 (disclosure of equity and trade-in information), SB 778 (identity recovery service contracts), and SB 1966 (debt cancellation agreements). The following paragraphs provide a general introduction regarding each legislative bill. The purpose paragraphs for each particular amended provision will then provide references to the bill requiring changes to that provision, along with additional detail as necessary.

During the 2009 legislative session, the Texas Legislature passed SB 1965 relating to the regulation of retail installment sales contracts for commercial vehicles. Certain provisions within Chapter 348 of the Texas Finance Code are not applicable to transactions involving commercial vehicles. Furthermore, these consumer-oriented provisions prevent commercial buyers from contracting for services related to commercial uses that would not be relevant to a consumer purchase. The intent of SB 1965 is to exempt retail installment sales contracts for commercial vehicles from certain provisions of the Texas Finance Code.

Due to increasing consumer complaints and legislation considered during the 2007 session, the House Committee on Financial Institutions conducted an interim study regarding motor vehicle installment sales, including two key issues: the financing of negative equity and the retirement of existing debt on a trade-in motor vehicle. Itemization of negative equity under current law has led to confusion among consumers. Concerning the payoff of trade-ins, without an explicit legal requirement for the retail seller to timely pay off trade-in vehicles, late payments and defaults have damaged consumers' credit reports through no fault of their own. With the enactment of HB 2438, the 81st Texas



Legislature amended Chapter 348 of the Texas Finance Code in order to address these issues.

Concerns regarding the higher incidence of identity theft have resulted in the sale of services to assist consumers in identity theft prevention, minimizing risk or exposure, and identity recovery. These services had been unregulated and with the general prohibition against any unauthorized fee for Chapter 348, the financing of these services in connection with a retail installment sales contract was in violation of the Texas Finance Code. Consequently, during the 2009 session the legislature enacted SB 778 to address the regulation of these services. The bulk of SB 778 outlines the jurisdiction of the Texas Department of Licensing and Regulation to regulate identity theft prevention and recovery services. However, the bill also authorizes the financing of these services under Texas Finance Code, Chapter 348.

Debt cancellation agreements were authorized to be offered as part of consumer loans in 2003, but at that time the legislature did not address the sale of these products with regard to motor vehicle retail installment sales. With the enactment of SB 1966, the 81st Texas Legislature amended the Texas Finance Code to allow the sale of debt cancellation agreements in connection with Chapter 348 retail installment sales contracts, with certain limitations and restrictions. Specifically, the Texas Legislature added §348.124 to the Texas Finance Code and amended §348.001 (adding a definition of "debt cancellation agreement"), §348.005 (authorizing a fee for debt cancellation agreements as an itemized charge), and §348.208 (conforming changes).

Implementation of SB 1965 is found throughout the recordkeeping rules (§§84.707 - 84.709). Corresponding changes have been made to each respective subsection (a) of the three recordkeeping rules to exempt transactions involving commercial vehicles from the recordkeeping requirements.

Regarding the disclosure of equity and trade-in information required by HB 2438, identical provisions have been added to all three rules for maintenance of the Texas Disclosure of Equity in Trade-In Motor Vehicle, which is being promulgated under new §84.204 in a separate proposal in this issue of the *Texas Register*. Although documents evidencing the payoff of trade-in vehicles are required in the existing rules for retail sellers, statutory references have been added concerning trade-in information. Likewise, references to the Texas Finance Code as well as proposed new §84.204 are included with provisions regarding the newly required disclosure of equity standard form. These parallel revisions implementing HB 2438 are proposed in §84.707(d)(2)(F)(iv) and new (d)(2)(G), §84.708(e)(2)(F)(iv) and new (e)(2)(G), and §84.709(e)(2)(C).

With SB 778's authorization of identity recovery service contracts, references have been added to the parenthetical lists of ancillary products contained in the first two recordkeeping rules relating to retail sellers. These additions implementing SB 778 are proposed in §84.707(d)(2)(K) and §84.708(e)(2)(L).

Equivalent provisions concerning the debt cancellation agreements authorized by SB 1966 have been added to all three recordkeeping rules. If a licensee issues a debt cancellation agreement, a copy must be maintained as part of the retail installment sales transaction file as proposed in §84.707(d)(2)(J), §84.708(e)(2)(K), and §84.709(e)(2)(E). The implementation of SB 1966 is continued throughout the latter two rules regarding retail sellers who collect on their contracts and holders taking assignment of contracts. Identical provisions are proposed regarding the following issues related to debt cancellation

agreements: records involving payment of the amount owed under a debt cancellation agreement for total loss or theft of an ordinary vehicle (§84.708(e)(2)(N) and §84.709(e)(2)(G)); under required account record information for each retail installment sales contract, any debt cancellation fees refunded if the licensee issued a debt cancellation agreement (§84.708(e)(3)(A) and §84.709(e)(3)(A)); under the recommended account record information for each retail installment sales contract, the amount of debt cancellation fees charged (§84.708(e)(3)(B) and §84.709(e)(3)(B)); and new paragraphs requiring maintenance of debt cancellation agreements for total loss or theft loss records (§84.708(e)(7) and §84.709(e)(7)).

In particular, the required information for payment of amounts owed for total loss or theft of an ordinary vehicle is divided into two sets of information that must be kept under two distinct situations: (1) where insurance coverage is part of the retail buyer's responsibility to the holder, or (2) where the holder bears complete responsibility for the amount owed. With this bifurcated approach, the agency intends to accommodate different market segments offering debt cancellation agreements while maintaining appropriate consumer protections. For more information regarding the agency's implementation of SB 1966, please refer to the proposal regarding §84.301, §84.302, and new §84.308 being published separately in this issue of the *Texas Register*.

In addition to addressing disclosure of equity and trade-in information, HB 2438 also enacted changes to Texas Finance Code, §348.517 concerning document retention requirements. The statutory changes align Chapter 348 with the common law statute of limitations for contracts of four years. Parallel revisions have been made to the latter two recordkeeping rules as proposed in §84.708(e)(9) and §84.709(e)(9).

Additionally, throughout §§84.707 - 84.709, technical corrections have been made relating to appropriate renumbering or relettering as well as updates to correct references to definitions renumbered due to the new definitions outlined earlier in this proposal.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of administering the amendments.

For each year of the first five years the amendments are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will implement recent legislative concepts in order to provide greater clarity. This greater clarity will bring stability to the industry from a number of standpoints including that any entity that operates within the parameters of the rules will be protected from litigation brought under the penalty provisions of Subtitle B of Title 4 (Texas Finance Code, Chapter 349). Additional public benefits resulting from the proposed amendments will be consistency in the financing of motor vehicles, enhanced protection for consumers, and the availability of uniform, reliable procedures for motor vehicle sales finance licensees.

The cost implications to persons required to comply will initially be addressed relating to each legislative bill. Then, an overall cost analysis will follow with regard to the entire proposal. First, there will be no cost to persons required to comply with the amendments under SB 778 concerning identity recovery service contracts.

Second, regarding the amendments to implement SB 1965 concerning commercial vehicles, the agency is not aware of any

costs to persons who are required to comply with these amendments. In fact, a cost savings is probable for licensees who handle commercial transactions due to the exemptions from providing contract forms in the licensing process and from maintaining records relating to commercial vehicles.

Third, as enacted by HB 2438, the required disclosure of equity standard form is mandated by Texas Finance Code, §348.0091. There may be some nominal costs to licensees in order to comply with the new statutory provisions, such as expenses related to creating and maintaining this single-page form and employee training to implement the standard form. Any requirements are imposed by the Texas Legislature through the enactment of HB 2438 and are not a result of the proposed amendments. Thus, aside from the costs required by the new statutory provisions, the agency does not anticipate any additional costs to persons who are required to comply with these amendments. In addition, under present law, licensees should already be documenting the majority of the trade-in vehicle information included on the standard form.

And fourth, in reference to the amendments under SB 1966 concerning debt cancellation agreements, licensees will have the option of not offering debt cancellation agreements, in which case, there will be no fiscal implications for those licensees. For licensees who opt to provide debt cancellation agreements in connection with their motor vehicle retail installment sales contracts, the fees charged in conjunction with the debt cancellation agreements are anticipated to cover the costs associated with creating and maintaining the agreements. Thus, due to the fees that licensees may charge offsetting the costs of the debt cancellation agreements, a neutral cost will result to persons who are required to comply with the debt cancellation amendments.

Upon review of all amendments contained in this proposal, it appears that nominal costs may arise in reference to the disclosure of equity standard form and debt cancellation agreements. However, those costs would be offset and even perhaps surpassed by the cost savings from the exemption of commercial transactions and the fees that may be charged on debt cancellation agreements. At a minimum, for those licensees required to create and maintain the disclosure of equity standard form who decide not to offer debt cancellation agreements and do not receive any savings from the exemption of commercial transactions, a nominal cost may result as required by the statute, not these amendments. Therefore, a neutral cost will result to persons who are required to comply with the amendments contained in the proposal as a whole. There will be no effect on individuals required to comply with the amendments as proposed.

The agency is not aware of any adverse economic effect on small or micro-businesses resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these amendments, the agency invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to [laurie.hobbs@occc.state.tx.us](mailto:laurie.hobbs@occc.state.tx.us). To be considered, a written comment must be received on or before the 31st day after the date the proposed amendments are published in the *Texas Register*. At the conclusion of the 31st day after the proposed

amendments are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

Regarding statutory authority from recent legislation for particular provisions, the amendments concerning ordinary vehicles are proposed under Texas Finance Code, §348.0015, as enacted by SB 1965 (Acts 2009, 81st Leg.), which authorizes the commission to determine by rule a motor vehicle that is of a type typically used for personal, family, or household use. The amendments relating to disclosure of equity and trade-in information are proposed under Texas Finance Code, §348.0091 (Acts 2009, 81st Leg.), which authorizes the commission to adopt a standard form for the disclosure of the equity in a retail buyer's trade-in motor vehicle.

In reference to all of the amendments, they are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 348.

*§84.707. Files and Records Required (Retail Sellers Assigning Retail Installment Sales Contracts).*

(a) Applicability. The recordkeeping requirements of this section apply to retail sellers that immediately assign or transfer all retail installment sales contracts to another authorized creditor. If a retail seller collects any installments, excluding downpayments, on a retail installment sales contract, the retail seller must comply with the recordkeeping requirements established under §84.708 of this title (relating to Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts)). The recordkeeping requirements of this section do not apply to motor vehicle retail installment sales transactions involving commercial vehicles.

(b) - (c) (No change.)

(d) Records required.

(1) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) for all retail installment sales transactions:

(i) - (v) (No change.)

(vi) any records applicable to the retail installment transaction outlined by subparagraphs (B) - (L) [(H)] of this paragraph.

(B) - (E) (No change.)

(F) for a retail installment sales transaction involving a downpayment, a copy of any document relating to the downpayment including:

(i) - (iii) (No change.)

(iv) documents or forms evidencing the payoff of any trade-in vehicle shown on the retail installment sales contract as required by Texas Finance Code, §348.408(c).

(G) for a retail installment sales transaction involving a trade-in motor vehicle, a copy of the Texas Disclosure of Equity in Trade-In Motor Vehicle required by Texas Finance Code, §348.0091 and §84.204 of this title (relating to Disclosure of Equity in Retail Buyer's Trade-in Motor Vehicle).

(H) [(G)] for a retail installment sales transaction involving the disbursement of funds for money advanced pursuant to Texas Finance Code, §348.404(b) and (c), a copy of any document relating to the disbursement of funds for money advanced.

(I) [(H)] for a retail installment sales transaction in which the licensee issues a certificate of insurance regarding insurance policies issued by or through the licensee in connection with the retail installment sales transaction, copies of the certificates of insurance.

(J) for a retail installment sales transaction in which the licensee issues a debt cancellation agreement, a copy of the debt cancellation agreement provided to the retail buyer.

(K) [(H)] for a retail installment sales transaction in which the licensee issues a certificate of coverage regarding ancillary products issued by or through the licensee in connection with the retail installment sales transaction, records of the ancillary products (motor vehicle theft protection plans, service contracts, maintenance agreements, identity recovery service contracts, etc.) including all certificates of coverage.

(L) [(H)] for a retail installment sales transaction where separate disclosures are required by federal or state law including the following:

(i) a transaction where disclosures required by the Truth in Lending Act are not incorporated into the text of the retail installment sales contract and the credit was extended for primarily for personal, family, or household purposes, a copy of the Truth in Lending statement required by Regulation Z, Truth in Lending, 12 C.F.R. §226.18, *et seq.*;

(ii) a transaction involving a cosigner, the notice to cosigner required by the Federal Trade Commission's Credit Practices Trade regulation, 16 C.F.R. §444.3.

(M) [(K)] for a retail installment sales contract that has an itemized charge for the inspection of a used motor vehicle, access to a copy of the work order, inspection receipt, or other verifiable evidence that reflects that the inspection was performed including the date and cost of the inspection.

(3) - (6) (No change.)

§84.708. *Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts).*

(a) Applicability. The recordkeeping requirements of this section apply to retail sellers that service or collect installments on retail installment sales contracts involving ordinary vehicles.

(b) - (c) (No change.)

(d) Record search requirements.

(1) (No change.)

(2) Alphabetical search. A licensee must be able to access records in alphabetical order by retail buyer name for open and closed transactions during the record retention period required by subsection (e)(9) [(8)] of this section. A licensee may comply with the alphabetical requirement by providing the commissioner's representative files by retail buyer name upon request by the commissioner's representative.

(e) Records required.

(1) Retail installment sales transaction report.

(A) General requirements. Each licensee must maintain records sufficient to produce a retail installment sales transaction report that contains a listing of each Texas Finance Code, Chapter 348 retail installment sales contract made or acquired by the licensee. The report is only required to include those retail installment sales contracts that are subject to the record retention period of paragraph (9) [(8)] of this subsection.

(B) - (D) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) for all retail installment sales transactions:

(i) - (vi) (No change.)

(vii) any records applicable to the retail installment transaction outlined by subparagraphs (B) - (Q) [(N)] of this paragraph.

(B) - (E) (No change.)

(F) for a retail installment sales transaction involving a downpayment, a copy of any record or document relating to the downpayment including:

(i) - (iii) (No change.)

(iv) documents or forms evidencing the payoff of any trade-in vehicle shown on the retail installment sales contract as required by Texas Finance Code, §348.408(c).

(G) for a retail installment sales transaction involving a trade-in motor vehicle, a copy of the Texas Disclosure of Equity in Trade-In Motor Vehicle required by Texas Finance Code, §348.0091 and §84.204 of this title (relating to Disclosure of Equity in Retail Buyer's Trade-in Motor Vehicle).

(H) [(G)] for a retail installment sales contract that has an itemized charge for the inspection of the vehicle, a copy of the work order, inspection receipt, or other verifiable evidence that reflects that the inspection was performed including the date and cost of the inspection.

(I) [(H)] for a retail installment sales transaction involving the disbursement of funds for money advanced pursuant to Texas Finance Code, §348.404(b) and (c), a copy of any document, form, or agreement relating to the disbursement of funds for money advanced.

(J) ~~[(H)]~~ for a retail installment sales transaction in which the licensee issues a certificate of insurance regarding insurance policies issued by or through the licensee in connection with the retail installment sales transaction, copies of the certificates of insurance.

(K) for a retail installment sales transaction in which the licensee issues a debt cancellation agreement, a copy of the debt cancellation agreement provided to the retail buyer.

(L) ~~[(H)]~~ for a retail installment sales transaction in which the licensee issues a certificate of coverage regarding ancillary products issued by or through the licensee in connection with the retail installment sales transaction, records of the ancillary products (motor vehicle theft protection plans, service contracts, maintenance agreements, identity recovery service contracts, etc.) including all certificates of coverage.

(M) ~~[(K)]~~ for a retail installment sales transaction involving insurance claims for credit life, credit accident and health, credit property, credit involuntary unemployment, collateral protection, or credit gap insurance:

(i) if the licensee does not negotiate or transact insurance claims on behalf of the retail buyer, records are not required to be maintained under this subparagraph.

(ii) if the licensee negotiates or transacts insurance claims on behalf of the retail buyer, supplemental insurance records, to the extent received by the licensee, supporting the settlement or denials of claims reported in the insurance loss records provided by paragraph (6) of this subsection including:

(I) Credit life insurance claims. The supplemental insurance records for credit life insurance claims must include the death certificate or other written records relating to the death of the retail buyer; proof of loss or claim form that discloses the amount of indebtedness at the time of death; check copies or electronic payment receipts that reflect the gross amount of the claim paid, including the amount of insurance benefits paid to beneficiaries other than the licensee which is in excess of the net amount necessary to pay the indebtedness; and the amount that is paid to beneficiaries other than the licensee.

(II) Credit accident and health insurance claims. The supplemental insurance records for credit accident and health insurance claims must include any written records relating to the disability, including statements from the physician, employer, and retail buyer; the proof of loss or claim form filed by the retail buyer; and copies of the checks or electronic payment receipts reflecting disability payments paid by the insurance carrier.

(III) Credit involuntary unemployment insurance claims. The supplemental insurance records for credit involuntary unemployment insurance claims must include any written document relating to the termination, layoff, or dismissal of the retail buyer; the proof of loss or claim form filed by the retail buyer; copies of the checks or electronic payment receipts reflecting the payment of the claim by the insurance carrier; and any other pertinent written record relating to the involuntary unemployment insurance claim.

(IV) Collateral protection insurance claims. The supplemental insurance records for collateral protection insurance claims must include the law enforcement report, fire department report, or other written record reflecting the loss or destruction of any covered motor vehicle; the proof of loss or claim form filed by the retail buyer; copies of the checks or electronic payment receipts reflecting the payment of the claim by the insurance carrier; and any other pertinent written record relating to the collateral protection insurance claim.

(V) Credit gap insurance claims. The supplemental insurance records for credit gap insurance claims must include the gap insurance claim form; proof of loss and settlement check from the retail buyer's basic comprehensive, collision, or uninsured/underinsured policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle; documents that provide verification of the retail buyer's primary insurance deductible; if the accident was investigated by a law enforcement officer, a copy of the offense or police report filed in connection with the total loss of the motor vehicle; if the accident was not investigated by a law enforcement officer, a copy of the Texas Department of Public Safety's "Driver's Accident Report" (Form ST-2) filed in connection with the total loss of the motor vehicle; and copies of the checks reflecting the settlement amount paid by the licensee for the gap insurance claim.

(N) for a retail installment sales transaction involving the payment of amount owed under a debt cancellation agreement for total loss or theft of an ordinary vehicle:

(i) the licensee must maintain copies of the following records on debt cancellation agreements for total loss or theft of ordinary vehicles that include insurance coverage as part of the retail buyer's responsibility to the holder:

(I) supplemental claim records, to the extent received by the licensee, supporting the settlement or denials of claims reported in the debt cancellation agreement loss records provided by paragraph (7) of this subsection including the debt cancellation request form;

(II) proof of loss and settlement payment from the retail buyer's primary comprehensive, collision, or uninsured/underinsured policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle;

(III) documents that provide verification of the retail buyer's primary insurance deductible;

(IV) if the accident was investigated by a law enforcement officer, a copy of the offense or police report filed in connection with the total loss of the motor vehicle;

(V) if the accident was not investigated by a law enforcement officer, a copy of the Texas Department of Public Safety's "Driver's Accident Report" (Form ST-2) filed in connection with the total loss of the motor vehicle; and

(VI) evidence of the credit for the debt cancellation applied to the account or a copy of the check reflecting the amount paid by the licensee for the cancellation of the debt; or

(ii) the licensee must maintain copies of the following records on debt cancellation agreements for total loss or theft of ordinary vehicles in which the holder bears complete responsibility for the amount owed after the total loss or theft:

(I) if the accident was investigated by a law enforcement officer, a copy of the offense or police report filed in connection with the total loss of the motor vehicle;

(II) if the accident was not investigated by a law enforcement officer, a copy of the Texas Department of Public Safety's "Driver's Accident Report" (Form ST-2) filed in connection with the total loss of the motor vehicle; and

(III) any records relating to the denial of the amount owed under the debt cancellation agreement for total loss or theft of any ordinary vehicle.

(O) ~~[(L)]~~ for a retail installment sales transaction where separate disclosures are required by federal or state law including the following:

(i) a transaction where disclosures required by the Truth in Lending Act are not incorporated into the text of the retail installment sales contract and the credit was extended for primarily for personal, family, or household purposes, a copy of the Truth in Lending statement required by Regulation Z, Truth in Lending, 12 C.F.R. §226.18, *et seq.*;

(ii) a transaction involving a cosigner, the notice to cosigner required by the Federal Trade Commission's Credit Practices Trade regulation, 16 C.F.R. §444.3.

(P) ~~[(M)]~~ for a retail installment sales transaction that has been repaid in full, evidence of the discharge or release of lien as prescribed by 43 TAC[-] §17.3(h) (relating to Motor Vehicle Certificates of Title).

(Q) ~~[(N)]~~ for a retail installment sales transaction involving a repossession, the records required by subsection (f) of this section.

(R) ~~[(O)]~~ for a retail installment sales contract that has an itemized charge for the inspection of a used motor vehicle, access to a copy of the work order, inspection receipt, or other verifiable evidence that reflects that the inspection was performed including the date and cost of the inspection.

(3) Account record for each retail installment sales contract (including payment and collection contact history). A separate paper, or an electronic record, must be maintained covering each retail installment sales contract. The paper or electronic account record must be readily available by reference to either a retail buyer's name or account number.

(A) Required information. The account record for each retail installment sales contract must contain at least the following information, unless stated otherwise:

(i) - (iv) (No change.)

(v) for a retail installment sales contract where the licensee receives or issues a refund of insurance charges, debt cancellation agreements, or authorized ancillary products, a licensee is responsible for maintaining sufficient documentation of any refund including final entries and is also responsible for providing refunds to the retail buyer or correctly applying refunds to the retail buyer's account. Refund amounts must be itemized to show:

(I) - (II) (No change.)

(III) the amount of any debt cancellation agreement fees refunded;

(IV) ~~[(III)]~~ the amount of any authorized ancillary products charges refunded;

(vi) (No change.)

(B) Recommended information. In addition to the required information under subparagraph (A) of this paragraph, it is recommended that the account record for each retail installment sales contract contain the following information:

(i) - (vi) (No change.)

(vii) amount of premium charges for insurance products; [-]

(viii) amount of fees charged for debt cancellation agreements.

(C) (No change.)

(4) - (6) (No change.)

(7) Debt cancellation agreement for total loss or theft loss records. Each licensee who handles the payment of amounts owed under debt cancellation agreements must maintain a register or be able to generate a report, paper or electronic, that reflects agreements that were either paid or denied. This register or report must show the name of the retail buyer, the account number, and the date of payment or denial.

(8) ~~[(7)]~~ Adverse action records. Each licensee must maintain adverse action records regarding all applications relating to Texas Finance Code, Chapter 348 retail installment sales transactions. Adverse action records must be maintained according to the record retention requirements contained in Regulation B, Equal Credit Opportunity Act, 12 C.F.R. §202.12(b), as amended. The current retention periods are 25 months for consumer credit and 12 months for business credit.

(9) ~~[(8)]~~ Retention and availability of records. All books and records required by this subsection must be available for inspection at any time by Office of Consumer Credit Commissioner staff, and must be retained for a period of ~~[three years from the date of the last payment made on the retail installment sales transaction,]~~ four years from the date of the contract, two years from the date of the final entry made thereon, whichever is later, or a different period of time if required by federal law. Upon notification of an examination pursuant to Texas Finance Code, §348.514(f), the licensee must be able to produce or access required books and records within a reasonable time at the licensed location or registered office specified on the license. The records required by this subsection must be available or accessible at an office in the state designated by the licensee except when the retail installment sales transactions are transferred under an agreement which gives the commissioner access to the documents. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

(f) (No change.)

*§84.709. Files and Records Required (Holders Taking Assignment of Retail Installment Sales Contracts).*

(a) Applicability. The recordkeeping requirements of this section apply to holders who are not retail sellers that service or collect installments on retail installment sales contracts involving ordinary vehicles.

(b) - (c) (No change.)

(d) Record search requirements.

(1) (No change.)

(2) Alphabetical search. A licensee must be able to access records in alphabetical order by retail buyer name for open and closed transactions during the record retention period required by subsection (e)(9) ~~[(8)]~~ of this section. A licensee may comply with the alphabetical requirement by providing the commissioner's representative files by retail buyer name upon request by the commissioner's representative.

(e) Records required.

(1) Retail installment sales transaction report. Each licensee must maintain records sufficient to produce a retail installment sales transaction report that contains a listing of each Texas Finance Code, Chapter 348 retail installment sales contract acquired by the licensee. The report is only required to include those retail installment sales contracts that are subject to the record retention period

of paragraph (9) [(8)] of this subsection. The retail installment sales transaction report can be maintained either as a paper record or may be generated from an electronic system or systems so long as the licensee can integrate the following information into a report. If the retail installment sales transaction report is maintained under a manual recordkeeping system, the retail installment sales transaction report must be updated within a reasonable time from the date the contract is acquired. A retail installment sales transaction report must contain the following information:

(A) - (D) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) for all retail installment sales transactions:

(i) - (iii) (No change.)

(iv) any records applicable to the retail installment transaction outlined by subparagraphs (B) - (J) [(G)] of this paragraph.

(B) (No change.)

(C) for a retail installment sales transaction involving a trade-in motor vehicle, a copy of the Texas Trade-In Equity Disclosure required by Texas Finance Code, §348.0091 and its implementing regulation;

(D) [(E)] for a retail installment sales transaction in which insurance policies are issued by or through the licensee in connection with the retail installment sales transaction, copies of the certificates of insurance.

(E) for a retail installment sales transaction in which the licensee issues a debt cancellation agreement, a copy of the debt cancellation agreement provided to the retail buyer.

(F) [(D)] for a retail installment sales transaction involving insurance claims for credit life, credit accident and health, credit property, credit involuntary unemployment, collateral protection, or credit gap insurance:

(i) if the licensee does not negotiate or transact insurance claims on behalf of the retail buyer, records are not required to be maintained under this subparagraph.

(ii) if the licensee negotiates or transacts insurance claims on behalf of the retail buyer, supplemental insurance records, to the extent received by the licensee, supporting the settlement or denials of claims reported in the insurance loss records provided by paragraph (6) of this subsection including:

(I) Credit life insurance claims. The supplemental insurance records for credit life insurance claims must include the death certificate or other written records relating to the death of the retail buyer; proof of loss or claim form that discloses the amount of indebtedness at the time of death; check copies or electronic payment

receipts that reflect the gross amount of the claim paid, including the amount of insurance benefits paid to beneficiaries other than the licensee which is in excess of the net amount necessary to pay the indebtedness; and the amount that is paid to beneficiaries other than the licensee.

(II) Credit accident and health insurance claims. The supplemental insurance records for credit accident and health insurance claims must include any written records relating to the disability, including statements from the physician, employer, and retail buyer; the proof of loss or claim form filed by the retail buyer; and copies of the checks or electronic payment receipts reflecting disability payments paid by the insurance carrier.

(III) Credit involuntary unemployment insurance claims. The supplemental insurance records for credit involuntary unemployment insurance claims must include any written document relating to the termination, layoff, or dismissal of the retail buyer; the proof of loss or claim form filed by the retail buyer; copies of the checks or electronic payment receipts reflecting the payment of the claim by the insurance carrier; and any other pertinent written record relating to the involuntary unemployment insurance claim.

(IV) Collateral protection insurance claims. The supplemental insurance records for collateral protection insurance claims must include the law enforcement report, fire department report, or other written record reflecting the loss or destruction of any covered motor vehicle; the proof of loss or claim form filed by the retail buyer; copies of the checks or electronic payment receipts reflecting the payment of the claim by the insurance carrier; and any other pertinent written record relating to the collateral protection insurance claim.

(V) Credit gap insurance claims. The supplemental insurance records for credit gap insurance claims must include the gap insurance claim form; proof of loss and settlement check from the retail buyer's basic comprehensive, collision, or uninsured/underinsured policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle; documents that provide verification of the retail buyer's primary insurance deductible; if the accident was investigated by a law enforcement officer, a copy of the offense or police report filed in connection with the total loss of the motor vehicle; if the accident was not investigated by a law enforcement officer, a copy of the Texas Department of Public Safety's "Driver's Accident Report" (Form ST-2) filed in connection with the total loss of the motor vehicle; and copies of the checks reflecting the settlement amount paid by the licensee for the gap insurance claim.

(G) for a retail installment sales transaction involving the payment of amount owed under a debt cancellation agreement for total loss or theft of an ordinary vehicle:

(i) the licensee must maintain copies of the following records on debt cancellation agreements for total loss or theft of ordinary vehicles that include insurance coverage as part of the retail buyer's responsibility to the holder:

(I) supplemental claim records, to the extent received by the licensee, supporting the settlement or denials of claims reported in the debt cancellation agreement loss records provided by paragraph (7) of this subsection including the debt cancellation request form;

(II) proof of loss and settlement payment from the retail buyer's primary comprehensive, collision, or uninsured/underinsured policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle;

(III) documents that provide verification of the retail buyer's primary insurance deductible;

(IV) if the accident was investigated by a law enforcement officer, a copy of the offense or police report filed in connection with the total loss of the motor vehicle;

(V) if the accident was not investigated by a law enforcement officer, a copy of the Texas Department of Public Safety's "Driver's Accident Report" (Form ST-2) filed in connection with the total loss of the motor vehicle; and

(VI) evidence of the credit for the debt cancellation applied to the account or a copy of the check reflecting the amount paid by the licensee for the cancellation of the debt; or

(ii) the licensee must maintain copies of the following records on debt cancellation agreements for total loss or theft of ordinary vehicles in which the holder bears complete responsibility for the amount owed after the total loss or theft:

(I) if the accident was investigated by a law enforcement officer, a copy of the offense or police report filed in connection with the total loss of the motor vehicle;

(II) if the accident was not investigated by a law enforcement officer, a copy of the Texas Department of Public Safety's "Driver's Accident Report" (Form ST-2) filed in connection with the total loss of the motor vehicle; and

(III) any records relating to the denial of the amount owed under the debt cancellation agreement for total loss or theft of any ordinary vehicle.

(H) [(E)] for a retail installment sales transaction where separate disclosures are required by federal or state law including the following:

(i) a transaction where disclosures required by the Truth in Lending Act are not incorporated into the text of the retail installment sales contract and the credit was extended for primarily for personal, family, or household purposes, a copy of the Truth in Lending statement required by Regulation Z, Truth in Lending, 12 C.F.R. §226.18, et seq.;

(ii) a transaction involving a cosigner, the notice to cosigner required by the Federal Trade Commission's Credit Practices Trade regulation, 16 C.F.R. §444.3.

(I) [(F)] for a retail installment sales transaction that has been repaid in full, evidence of the discharge or release of lien as prescribed by 43 TAC[-] §17.3(h) (relating to Motor Vehicle Certificates of Title).

(J) [(G)] for a retail installment sales transaction involving repossession, the records required by subsection (f) of this section.

(3) Account record for each retail installment sales contract (including payment and collection contact history). A separate paper, or an electronic record, must be maintained covering each retail installment sales contract. The paper or electronic account record must be readily available by reference to either a retail buyer's name or account number.

(A) Required information. The account record for each retail installment sales contract must contain at least the following information, unless stated otherwise:

(i) - (iv) (No change.)

(v) for a retail installment sales contract where the licensee receives a refund of insurance charges, debt cancellation agreements or authorized ancillary products, a licensee is responsible for maintaining sufficient documentation of any refund including final entries and is also responsible for providing refunds to the retail buyer

or correctly applying refunds to the retail buyer's account. Refund amounts must be itemized to show:

(I) - (II) (No change.)

(III) the amount of debt cancellation agreement fees refunded;

(IV) [(HH)] the amount of any authorized ancillary products charges refunded;

(vi) (No change.)

(B) Recommended information. In addition to the required information under subparagraph (A) of this paragraph, it is recommended that the account record for each retail installment sales contract contain the following information:

(i) - (vi) (No change.)

(vii) amount of premium charges for insurance products; [-]

(viii) amount of fees charged for debt cancellation agreements.

(C) (No change.)

(4) - (6) (No change.)

(7) Debt cancellation agreement for total loss or theft loss records. Each licensee who handles the payment of amounts owed under debt cancellation agreements must maintain a register or be able to generate a report, paper or electronic, that reflects agreements that were either paid or denied. This register or report must show the name of the retail buyer, the account number, and the date of payment or denial.

(8) [(7)] Adverse action records. Each licensee must maintain adverse action records regarding all applications relating to Texas Finance Code, Chapter 348 retail installment sales transactions. Adverse action records must be maintained according to the record retention requirements contained in Regulation B, Equal Credit Opportunity Act, 12 C.F.R. §202.12(b), as amended. The current retention periods are 25 months for consumer credit and 12 months for business credit.

(9) [(8)] Retention and availability of records. All books and records required by this subsection must be available for inspection at any time by Office of Consumer Credit Commissioner staff, and must be retained for a period of [three years from the date of the last payment made on the retail installment sales transaction;] four years from the date of the contract, two years from the date of the final entry made thereon, whichever is later, or a different period of time if required by federal law. Upon notification of an examination pursuant to Texas Finance Code, §348.514(f), the licensee must be able to produce or access required books and records within a reasonable time at the licensed location or registered office specified on the license. The records required by this subsection must be available or accessible at an office in the state designated by the licensee except when the retail installment sales transactions are transferred under an agreement which gives the commissioner access to the documents. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2009.

TRD-200903696

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: October 4, 2009

For further information, please call: (512) 936-7621

## SUBCHAPTER H. RETAIL INSTALLMENT SALES CONTRACT PROVISIONS

### 7 TAC §§84.801, 84.802, 84.804, 84.807 - 84.809

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §84.801, concerning Purpose, §84.802, concerning Non-Standard Contract Filing Procedures, §84.804, concerning Disclosures and Contract Provisions Required by Texas Finance Code, §84.807, concerning Contract Provisions, §84.808, concerning Model Clauses, and §84.809, concerning Permissible Changes, relating to plain language requirements for motor vehicle retail installment sales contracts.

The purpose of these amendments governing plain language contract provisions for Chapter 348 contracts is to implement recent legislation enacted by the 81st Texas Legislature, including the following bills: Senate Bill (SB) 1965 (commercial vehicles), SB 1966 (debt cancellation agreements), SB 778 (identity recovery service contracts), and House Bill (HB) 3621 (documentary fees). The following paragraphs provide a general introduction regarding each legislative bill. The purpose paragraphs for each particular amended provision will then provide references to the bill(s) requiring changes to that provision, along with additional detail as necessary.

During the 2009 legislative session, the Texas Legislature passed SB 1965 relating to the regulation of retail installment sales contracts for commercial vehicles. Certain provisions within the Chapter 348 of the Texas Finance Code are not applicable to transactions involving commercial vehicles. Furthermore, these consumer-oriented provisions prevent commercial buyers from contracting for services related to commercial uses that would not be relevant to a consumer purchase. The intent of SB 1965 is to exempt retail installment sales contracts for commercial vehicles from certain provisions of the Texas Finance Code.

Debt cancellation agreements were authorized to be offered as part of consumer loans in 2003, but at that time the legislature did not address the sale of these products with regard to motor vehicle retail installment sales. With the enactment of SB 1966, the 81st Texas Legislature amended the Texas Finance Code to allow the sale of debt cancellation agreements in connection with Chapter 348 retail installment sales contracts, with certain limitations and restrictions. Specifically, the Texas Legislature added §348.124 to the Texas Finance Code and amended §348.001 (adding a definition of "debt cancellation agreement"), §348.005 (authorizing a fee for debt cancellation agreements as an itemized charge), and §348.208 (conforming changes).

Concerns regarding the higher incidence of identity theft have resulted in the sale of services to assist consumers in identity theft prevention, minimizing risk or exposure, and identity recovery. These services had been unregulated and with the general prohibition against any unauthorized fee for Chapter 348, the fi-

ancing of these services in connection with a retail installment sales contract was in violation of the Texas Finance Code. Consequently, during the 2009 session the legislature enacted SB 778 to address the regulation of these services. The bulk of SB 778 outlines the jurisdiction of the Texas Department of Licensing and Regulation to regulate identity theft prevention and recovery services. However, the bill also authorizes the financing of these services under Chapter 348.

The maximum documentary fee for motor vehicle dealers had been \$50 for more than 15 years. Due to the additional costs of federal requirements to protect consumer information placed on dealers during this time, the costs of processing motor vehicle retail installment sales contracts has risen and been absorbed by the industry. The 81st Texas Legislature enacted HB 3621 in order to remove the \$50 cap on the documentary fee charged on contracts under Chapter 348 of the Texas Finance Code. The bill requires that a documentary fee not exceed a reasonable amount for handling documents relating to the sale of a motor vehicle. Additionally, HB 3621 authorizes the agency to review the amount of a documentary fee charged for reasonableness and to set standards concerning reasonable amounts. However, this rule proposal focuses on the required changes to plain language disclosures. A future rule proposal will address the reasonableness issue.

The amendments to the purpose section in §84.801(a) implement SB 1965 by adding language to narrow application of Subchapter H, Retail Installment Sales Contract Provisions, to transactions involving ordinary vehicles. Clarifying statements provide that retail sellers and holders of retail installment sales contracts involving commercial vehicles may utilize the applicable model provisions but that such parties are not obligated to comply with the subchapter.

Further implementation of SB 1965 is found in the addition of subsection (e) to §84.802. The new provision states that retail installment sales contracts involving commercial vehicles do not have to be submitted under the non-standard contract filing procedures outlined by the section.

The changes to §84.804(4) simply provide inclusion within the list of itemized charges for two products newly authorized by the legislature: debt cancellation agreements (as per SB 1966), and identity recovery service contracts (as per SB 778). Other items within the list have been relettered accordingly. Similarly, the amendment to §84.807(12) clarifies that a Chapter 348 contract may include a model provision regarding optional insurance coverages as well as debt cancellation agreements.

In §84.808(5) concerning identification of a motor vehicle, language has been added to clarify that the primary purpose designation may be used to determine whether the vehicle was purchased primarily for commercial purposes or primarily for personal, family, or household use. The retail seller or holder may rely on this representation unless that party has actual knowledge to the contrary. These additions implement SB 1965.

The figures contained in §84.808(8)(A) and (B) have been revised in order to incorporate the statutory changes to the documentary fee notice, as enacted by HB 3621. The actual text of these changes is included in the documentary fee provisions found in §84.808(9)(A) and (B), along with the revised Spanish translations. References to heavy commercial vehicles have been deleted from the disclosures. Additionally, paragraph (9)(A) and (B) also contain a few technical corrections to improve clarity and grammar.



Technical corrections have been made to figures §84.808(7), (11), and (13), but the language and substance of the provisions remain the same.

In §84.808(12), the rule text and accompanying figure regarding optional insurance coverages have been amended to incorporate notice information concerning debt cancellation agreements. These changes implement SB 1966. And finally, the sample model contract provided in Figure §84.809(b) includes all of the contract revisions previously outlined, combining the permitted model clauses into one document.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments to these rules are in effect, there will be no fiscal implications for state or local government as a result of administering the amendments.

For each year of the first five years the amendments to these rules are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will implement recent legislative concepts in order to provide greater clarity. This greater clarity will bring stability to the industry from a number of standpoints including that any entity that operates within the parameters of the rules will be protected from litigation brought under the penalty provisions of Subtitle B of Title 4 (Texas Finance Code, Chapter 349). Additional public benefits resulting from the proposed amendments will be consistency in the financing of motor vehicles, enhanced protection for consumers, and the availability of standard, reliable plain language provisions and forms for motor vehicle sales finance licensees.

The cost implications to persons required to comply will initially be addressed relating to each legislative bill. Then, an overall cost analysis will follow with regard to the entire proposal. First, there will be no cost to persons required to comply with the amendments under SB 778 concerning identity recovery service contracts.

Second, regarding the amendments to implement SB 1965 concerning commercial vehicles, the agency is not aware of any costs to persons who are required to comply with these amendments. In fact, a cost savings is probable for licensees who handle commercial transactions due to the exemptions from filing non-standard plain language contracts and from compliance with plain language relating to commercial vehicles.

Third, in reference to the amendments under SB 1966 concerning debt cancellation agreements, licensees will have the option of not offering debt cancellation agreements, in which case, there will be no fiscal implications for those licensees. For licensees who opt to provide debt cancellation agreements in connection with their motor vehicle retail installment sales contracts, the fees charged in conjunction with the debt cancellation agreements are anticipated to cover the costs associated with creating and maintaining the agreements. Thus, due to the fees that licensees may charge offsetting the costs of the debt cancellation agreements, a neutral cost will result to persons who are required to comply with the debt cancellation amendments.

Fourth, concerning the amendments to implement HB 3621 relating to documentary fees, a similar analysis applies as with SB 1966. Licensees will have the option of not increasing their documentary fees, in which case there will be little to no fiscal implications for those licensees for approximately one year. As stated in the agency's Motor Vehicle Advisory Bulletin from August 31, 2009, licensees who elect to not increase their documentary fees may use their current contract forms until August 31, 2010. For

licensees who decide to increase their fees, nominal costs may result to update their programming and produce new contracts. However, it is anticipated that the one-time costs of updating contracts will be exceeded by the increased documentary fees that licensees will then be able to charge on each and every new contract issued.

Upon review of all amendments contained in this proposal, it appears that nominal costs may arise in reference to the debt cancellation agreements and documentary fee notice changes. However, those costs would be offset and likely surpassed by the cost savings from the exemption of commercial transactions, the fees that may be charged on debt cancellation agreements, and the legislature's authorized increases in documentary fees. At a minimum, for those licensees who decide not to offer debt cancellation agreements and who do not receive any savings from the exemption of commercial transactions, any nominal costs resulting should those licensees elect to increase their documentary fees would be offset by the larger fees collected. Therefore, a neutral cost will result to persons who are required to comply with the amendments contained in the proposal as a whole. There will be no effect on individuals required to comply with the amendments as proposed.

The agency is not aware of any adverse economic effect on small or micro-businesses resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these amendments, the agency invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to [laurie.hobbs@occc.state.tx.us](mailto:laurie.hobbs@occc.state.tx.us). To be considered, a written comment must be received on or before the 31st day after the date the proposed amendments are published in the *Texas Register*. At the conclusion of the 31st day after the proposed amendments are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

Regarding statutory authority from recent legislation for particular provisions, the amendments concerning ordinary vehicles are proposed under Texas Finance Code, §348.0015, as enacted by SB 1965 (Acts 2009, 81st Leg.), which authorizes the commission to determine by rule a motor vehicle that is of a type typically used for personal, family, or household use.

In reference to all of the amendments, they are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 348.

#### *§84.801. Purpose.*

(a) The purpose of this subchapter is to provide model provisions and a model plain language contract in English for Texas Finance Code, Chapter 348 motor vehicle installment sales contract provisions. This subchapter only applies to retail installment sales transactions involving ordinary vehicles. A retail seller or holder of retail installment

sales contracts involving commercial vehicles is not required or obligated to comply with the provisions of this subchapter. A retail seller or holder of retail installment sales contracts involving commercial vehicles may utilize the applicable model provisions of this subsection to create a retail installment sales contract. The establishment of model provisions for these transactions will encourage the use of simplified wording that will ultimately benefit consumers by making these contracts easier to understand. Use of the "plain language" model contract by a seller is not mandatory. Except for retail installment sales contracts involving commercial vehicles, the [The] seller, however, may not use a contract other than a model contract unless the seller has submitted the contract to the commissioner in compliance with §84.802 of this title (relating to Non-Standard Contract Filing Procedures). The commissioner shall issue an order disapproving the contract if the commissioner determines the contract does not comply with this section or rules adopted under this section. A seller may not claim the commissioner's failure to disapprove a contract constitutes approval.

(b) (No change.)

§84.802. *Non-Standard Contract Filing Procedures.*

(a) - (d) (No change.)

(e) Commercial vehicle. Pursuant to Texas Finance Code, §341.502(a), a motor vehicle retail installment sales contract involving a commercial vehicle does not have to be submitted in accordance with this section.

§84.804. *Disclosures and Contract Provisions Required by Texas Finance Code.*

The contract shall have the following disclosures and provisions, as applicable:

(1) - (3) (No change.)

(4) Itemized charges not included in the cash price, as required by Texas Finance Code, §348.102(a)(7). Itemized charges may include, but are not limited to, the following charges as applicable:

(A) - (K) (No change.)

(L) Debt cancellation agreement;

(M) [~~(L)~~] Theft protection plan;

(N) [~~(M)~~] Service contract; [ø]

(O) [~~(N)~~] Warranty contract; or [-]

(P) Identity recovery service contract.

(5) - (8) (No change.)

§84.807. *Contract Provisions.*

A Texas Finance Code, Chapter 348 motor vehicle installment sales contract may include the following contract provisions to the extent not prohibited by law or regulation. If the seller desires to assess certain charges or exercise certain rights under one of the following provisions, except provisions relating to default, reposessions, acceleration, and assignment of the contract, the seller must include the provision in the contract. A seller may delete inapplicable provisions. A seller who does not desire to apply a provision is not required to include it in the contract. For example, the seller may omit the balloon payment provisions if there is no balloon payment. A seller may also exclude non-relevant portions of a model clause. For example, a seller who does not routinely finance certain insurance coverages may omit those non-applicable portions of the model clause. A Texas Finance Code, Chapter 348 motor vehicle installment sales contract may contain the following provisions:

(1) - (11) (No change.)

(12) Optional insurance coverages and debt cancellation agreement provision;

(13) - (45) (No change.)

§84.808. *Model Clauses.*

The following model clauses provide the plain language equivalent of provisions found in contracts subject to Texas Finance Code, Chapter 348.

(1) - (4) (No change.)

(5) Identification of motor vehicle. The motor vehicle identification information provision should contain the following information about the motor vehicle: the seller's stock number; the manufacturer's year model; the manufacturer's make; the manufacturer's model type or number; the vehicle identification number; the license plate number (if applicable); a new/used designation; and the primary purpose designation. The primary purpose designation may be used to determine whether the vehicle was purchased primarily for commercial purposes or primarily for personal, family or household purposes. Unless the retail seller or holder has actual knowledge that the representation is not true, the retail seller or holder may rely upon the representation made in the primary purpose designation, as permitted by Texas Finance Code, §348.0015(b). The seller's stock number and the license number are both optional; the omission will not make a contract non-standard. The motor vehicle identification information provision may include additional information about the vehicle including, odometer reading, color, the designation as a heavy commercial vehicle, and key code. If the creditor includes this additional information about the motor vehicle, the change will not make the provision a non-standard provision. The model clause regarding identification of the motor vehicle reads:

Figure: 7 TAC §84.808(5) (No change.)

(6) (No change.)

(7) Truth in Lending Act disclosure. The model clause regarding Truth in Lending Act disclosure reads:

Figure: 7 TAC §84.808(7)

[Figure: 7 TAC §84.808(7)]

(8) Itemization of amount financed. The creditor drafting the contract is given considerable flexibility regarding the itemization of amount financed disclosure so long as the itemization of amount financed disclosure complies with the Truth in Lending Act. As an example, a creditor may disclose the manufacturer's rebate either as: a component of the downpayment; or a deduction from the cash price of the motor vehicle. The model contract provision for the itemization of the amount financed discloses the manufacturer's rebate as a component of the downpayment. If the creditor elected to disclose the manufacturer's rebate as a deduction from the cash price of the motor vehicle, the cash price component of the itemization of amount financed would be amended to reflect the dollar amount of the manufacturer's rebate being deducted from the cash price of the motor vehicle.

(A) The model clause regarding itemization of amount financed-sales tax advance reads:

Figure: 7 TAC §84.808(8)(A)

[Figure: 7 TAC §84.808(8)(A)]

(B) The model clause regarding itemization of amount financed-sales tax deferred reads:

Figure: 7 TAC §84.808(8)(B)

[Figure: 7 TAC §84.808(8)(B)]

(C) - (D) (No change.)

(9) Documentary fee.

(A) The following notice satisfies the requirements of Texas Finance Code, §348.006 if printed in [a size equal to at least 10-point] type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous and within reasonable proximity to the place at which the fee is disclosed. [The parenthetical phrase may be inserted at the dealer's option or the disclosure may be made without the parenthetical phrase if the dealer does not charge an amount in excess of \$50 for either ordinary motor vehicles or heavy commercial vehicles or if the contract form is not used for heavy commercial vehicles.] The model clause is contained in the Itemization of Amount Financed. The documentary fee clause reads: "A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents relating to the sale. A documentary fee may not exceed a reasonable amount agreed to by the parties. This notice is required by law." ["A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents and performing services relating to the closing of a sale. A documentary fee may not exceed \$50 (for a motor vehicle contract or a reasonable amount agreed to by the parties for a heavy commercial vehicle contract). This notice is required by law."]

(B) The following notices are [notice is a] sufficient Spanish translations [translation] of the documentary fee disclosure required by Texas Finance Code, §348.006. [The parenthetical phrase may be inserted at the dealer's option or the disclosure may be made without the parenthetical phrase if the dealer does not charge an amount in excess of \$50 for either ordinary motor vehicles or heavy commercial vehicles or if the contract form is not used for heavy commercial vehicles.] The Spanish translation may read: ["Un honorario de documentación no es un honorario oficial. Un honorario de documentación no es requerido por la ley, pero puede ser cargada al comprador como gastos de manejo de documentos y para realizar servicios relacionados con el cierre de una venta. Un honorario de documentación no puede exceder \$50 (un contrato de vehículo automotor o una cantidad razonable acordada por las partes para un contrato de vehículo comercial pesado). Esta notificación es requerida por la ley." Or "Un cargo documental no es un cargo oficial. La ley no exige que se imponga un cargo documental. Pero éste podría cobrarse a los compradores por el manejo de la documentación y la prestación de servicios en relación con el cierre de una venta. Un cargo documental no puede exceder de \$50 para (un contrato de vehículo automotor o una cantidad razonable acordada por las partes para un contrato de vehículo comercial pesado). Esta notificación se exige por ley."]

(i) "Un honorario de documentación no es un honorario oficial. Un honorario de documentación no es requerido por la ley, pero puede ser cargada al comprador como gastos de manejo de documentos relacionados con una venta. Un honorario de documentación no puede exceder una cantidad razonable acordada por las partes. Esta notificación es requerida por la ley."; or

(ii) "Un cargo documental no es un cargo oficial. La ley no exige que se imponga un cargo documental. Pero éste podría cobrarse a los compradores por el manejo de la documentación en relación con la venta. Un cargo documental no puede exceder una cantidad razonable acordada por las partes. Esta notificación se exige por ley."

(10) (No change.)

(11) Required physical damage insurance. The creditor may choose [choose] to omit the statement of the retail buyer's right to obtain substitute coverage from another source. The model clause regarding required physical damage insurance reads:

Figure: 7 TAC §84.808(11)

[Figure: 7 TAC §84.808(11)]

(12) Optional insurance coverages and debt cancellation agreement. The model clause regarding optional insurance coverages and debt cancellation agreement reads:

Figure: 7 TAC §84.808(12)

[Figure: 7 TAC §84.808(12)]

(13) Optional credit life and accident and health insurance. The model clause regarding optional credit life and accident and health insurance reads:

Figure: 7 TAC §84.808(13)

[Figure: 7 TAC §84.808(13)]

(14) - (43) (No change.)

§84.809. Permissible Changes.

(a) (No change.)

(b) A sample model motor vehicle retail installment sales contract is presented in the following example.

Figure: 7 TAC §84.809(b)

[Figure: 7 TAC §84.809(b)]

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2009.

TRD-200903698

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: October 4, 2009

For further information, please call: (512) 936-7621

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**TITLE 16. ECONOMIC REGULATION**

**PART 4. TEXAS DEPARTMENT OF  
LICENSING AND REGULATION**

**CHAPTER 74. ELEVATORS, ESCALATORS,  
AND RELATED EQUIPMENT**

**16 TAC §74.50**

The Texas Department of Licensing and Regulation ("Department") proposes an amendment to 16 Texas Administrative Code §74.50 regarding the installation of elevator door restrictors and providing elevator firefighters service. This amendment is necessary to implement House Bill 3628, 81st Legislature, Regular Session, 2009.

The proposed amendment to §74.50 requires applicants submit requests to delay installation of elevator door restrictors or elevator firefighters service on a department approved form and pay a fee. The proposed amendment also requires verification that the building owner provides notification of the application to all tenants in the building and will provide notification to building occupants immediately upon request.

William H. Kuntz, Jr., Executive Director of the Department, has determined that for each year of the first five-year period the pro-

posed amendment is in effect, there will be no additional costs to the Department to enforce and administer this rule.

Mr. Kuntz has determined that for each year of the first five-year period the proposed amended rule is in effect, the public will benefit from having access to information about which elevators have upgraded safety features and which do not have enhanced services.

Mr. Kuntz also has determined that for each year of the first five-year period the amendment is in effect, there will be economic costs imposed on persons and businesses that are required to comply with this amendment. The economic costs relate to administrative expenses and regulatory expenses. The administrative expenses may include the initial application fee, along with copying and postage expenses. The administrative expenses are expected to be inconsequential and not rise to the level of an adverse economic impact on small businesses. Regulatory expenses related to the enhanced service upgrades are required by legislative mandate, and therefore no regulatory alternative is available. Accordingly, a regulatory flexibility analysis is unnecessary.

Comments on the proposal may be submitted by mail to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; by facsimile to (512) 475-3032; or by email to [erule.comments@license.state.tx.us](mailto:erule.comments@license.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under Chapter 754, Health and Safety Code, which directs the Department's governing body, the Texas Commission of Licensing and Regulation ("Commission"), to adopt rules to establish an annual inspection and certification of equipment covered by standards adopted under Chapter 754; and Texas Occupations Code Chapter 51, which authorizes the Commission to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Chapter 754, Health and Safety Code, and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposed amendment.

**§74.50. Reporting Requirements--Building Owner.**

(a) (No change.)

(b) Requests [All Delay applications, received after September 1, 2003] to delay the installation of [install] door restrictors until [restrictor and fire service by] September 1, 2010, and provide firefighters' service until September 1, 2012, must be made on a Department approved form and include [the following on the delay application form or attach a statement to the delay application form]:

(1) verification that the building owner:

(A) provided written notification of the application to delay the installation of door restrictors and/or providing firefighters' service and the plan of compliance to [has notified] all tenants [or occupants] in the building [that the elevators do not comply with the door restrictor or fire service requirements in the ASME A17.3-2002 Code and has made available to tenants or occupants upon request the building owner plan of compliance before 2010]; and

(B) will provide written notification of the application and the plan of compliance to delay installation of door restrictors and/or providing firefighters' service immediately upon request to any occupants in the building.

(2) the building owner plan of compliance [~~before 2010~~]; and

(3) all applicable fees [compliance completion date].

(c) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 24, 2009.

TRD-200903729

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: October 4, 2009

For further information, please call: (512) 463-7348



## CHAPTER 90. IDENTITY RECOVERY SERVICE CONTRACT PROVIDERS AND ADMINISTRATORS

**16 TAC §§90.1, 90.10, 90.20 - 90.24, 90.40 - 90.43, 90.70, 90.80, 90.90, 90.91**

The Texas Department of Licensing and Regulation ("Department") proposes new rules at 16 Texas Administrative Code ("TAC") Chapter 90, §§90.1, 90.10, 90.20 - 90.24, 90.40 - 90.43, 90.70, 90.80, 90.90, and 90.91, regarding identity recovery service contract providers and administrators.

Senate Bill (S.B.) 778 (81st Legislature, Regular Session, 2009) created a new chapter under the Texas Occupations Code, Chapter 1306, the Identity Recovery Service Contract Regulatory Act ("Act"). This Act gives regulatory authority to the Department over a segment of the identity recovery service contract industry effective September 1, 2009. S.B. 778 requires the Department to adopt rules to implement the statutory requirements under Texas Occupations Code, Chapter 1306.

Texas Occupations Code, Chapter 1306 applies to identity recovery service contracts that are sold to consumers at the time of purchase of a motor vehicle where the vehicle and the identity recovery service contract are financed. Texas Occupations Code, Chapter 1306 does not apply to identity recovery contracts that are sold at a location or by a means other than a motor vehicle dealership, nor does the Act apply to identity recovery contracts that are not financed with the vehicle.

The statutory language of Texas Occupations Code, Chapter 1306 was modeled after the language of the current Service Contract Program under Texas Occupations Code, Chapter 1304. As a result, the proposed new rules at 16 TAC Chapter 90 for the Identity Recovery Service Contract Program are very similar to the Service Contract Program proposed rules at 16 TAC Chapter 77, which were published in the July 24, 2009, issue of the *Texas Register* (34 TexReg 4805).

The new rules at 16 TAC Chapter 90 detail the registration requirements, the financial security obligations, and other responsibilities for identity recovery service contract providers ("providers") and identity recovery service contract administrators ("administrators") that are covered by the Act. Proposed §90.1 states the Department's authority to promulgate rules.

Proposed §90.10 establishes definitions, in addition to those found in Texas Occupations Code, Chapter 1306, for the terms that are used in the statute and rules.

Proposed §§90.20 - 90.24 compile the registration requirements found throughout the statute and provide details regarding the registration requirements for providers and administrators. Sections 90.20 and 90.21 provide details regarding the initial registration and renewal registration requirements for providers. Section 90.22 sets out the details regarding the required quarterly fees under Texas Occupations Code, §1306.054 that a provider must submit to the Department based on the number of contracts sold or issued by the provider in the previous calendar quarter. The statutory fee is \$1 per contract sold or issued. The provider must report the number of contracts sold and submit the required fee to the Department in order to keep the registration in good standing. Sections 90.23 and 90.24 set out the initial registration and renewal registration requirements, respectively, for administrators.

Proposed §§90.40 - 90.43 detail the financial security requirements for providers, which are set out in general terms in the statute and which are critical for ensuring the performance of the providers' obligations to their contract holders. The rules explain the three financial security options that are available to a provider, and they detail the general requirements that are applicable to all three options and the specific requirements that accompany each option.

The proposed §90.70 sets out the responsibilities and obligations that providers and administrators have to their contract holders and to the Department. These responsibilities include: identifying the provider in advertisements and in identity recovery service contracts; providing Department contact information and complaint resolution procedures to consumers; identifying who is covered by the contract, the term of the contract, and any conditions that may change the term of the contract; disclosing the procedures and timeframes for returning, voiding, refunding the purchase price, or cancelling an identity recovery service contract; providing receipts and copies of identity recovery service contracts to consumers in a set amount of time; and providing updated information to the Department. The proposed rules also establish procedures that providers must follow if they cease operations in Texas but still have active identity recovery service contracts in effect.

Proposed §90.80 establishes the fees for this program, which have been set at an amount necessary to cover the cost of administering the program as required under Texas Occupations Code, §1306.054(b). Proposed §90.90 and §90.91 state the authority of the Texas Commission of Licensing and Regulation ("Commission") and the Department to impose administrative penalties and sanctions and to use the enforcement authority granted under Texas Occupations Code, Chapters 51 and 1306.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed rules are in effect, the Department expects revenues will offset any costs. The Department anticipates that there will be no costs to local government as a result of enforcing or administering the proposed rules.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed rules are in effect, the public will benefit because the proposed rules detail the identity recovery service contract providers' financial obligations and contractual responsibilities to members of the public who purchase identity recovery service contracts ("identity recovery service contract

holders"). The public also will benefit from the information that providers must give to potential and new identity recovery service contract holders. In addition, identity recovery service contract holders will benefit from receiving at least 30 days advance notice if their identity recovery service contract provider ceases operations in Texas.

The identity recovery service contract industry will benefit because of the clarity and detail provided in the rules regarding registration, financial security and other requirements for identity recovery service contract providers and administrators operating in Texas.

The Department anticipates that there are approximately 5 - 20 identity recovery service contract providers and administrators who will be covered under the Act and are expected to register with the Department to do business in Texas. Since this is a new program for the Department and this industry has not been regulated previously by another Texas state agency, the Department has to assume that a few of the providers and administrators may be classified as "small businesses" or "micro-businesses" as defined under Texas Government Code, Chapter 2006. After evaluating the proposed rules, the Department believes that there will be no adverse economic effect on small and micro-businesses. That being said, because there may be minimal economic costs to persons who are required to comply with the rules as proposed, the Department has prepared an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002.

The Department believes that most of the costs that will be incurred by persons who are required to comply are a result of the new statute, not the rules. S.B. 778 created a regulatory structure for a segment of the identity recovery service contract industry that was previously unregulated by a state agency. The statute also requires the payment of initial and renewal registration fees by providers and administrators and the payment of quarterly contract fees based on the number of contracts sold or issued in the state by providers. In accordance with Texas Occupations Code, Chapters 51 and 1306, the Department must set the registration and other fees at an amount necessary to cover the costs of administering this program. The quarterly contract fee of \$1 per contract sold or issued in the previous calendar quarter is established in statute.

While there may be minimal economic costs associated with complying with the proposed rules, the agency has determined that the rules will not have an adverse economic effect on small or micro-businesses. Most of the provisions in the new rules provide additional detail and clarification to the statute, but not additional requirements. There will be no costs to those persons who are required to comply with these provisions. There are two provisions in the proposed rules that may result in minimal costs to providers (not administrators), but the Department has narrowly tailored the new requirements and does not anticipate an adverse economic cost to small or micro-businesses as a result of these provisions.

The first provision requires the provider to identify itself on the advertising materials that are used by the provider, its administrator or its sellers. In the case of the Service Contract Program, service contract sellers are not registered with the Department, only the providers and the administrators are. The Department believes it is important for the public to know the name of the provider who is financially and contractually responsible for a particular service contract being advertised and sold and whether that provider is registered in Texas to do business. The

Identity Recovery Service Contract Program is modeled after the Service Contract Program and has the same regulatory structure in which sellers are not registered with the Department. For this program, the consumer purchases the identity recovery service contract from the automobile dealer at the time of the vehicle purchase, but the dealer is not the provider of the identity recovery service contract. The Department proposes that the same requirement that was proposed for the Service Contract Program rules also be included in the Identity Recovery Service Contract Program rules.

The Department has narrowly tailored this provision to require only the name of the provider on the solicitation. The less burdensome alternative is not requiring the provider's name on the advertising, which leaves the public wondering whether the provider behind an advertisement is registered to do business in Texas. Other alternatives to the proposed rule would require the provider to provide additional information on the solicitations, which would probably be more burdensome and costly. The Department believes the provision is a reasonable solution. The Department believes that most identity recovery service contract providers probably already include their names on their marketing materials and that this requirement should not result in an additional cost to those providers.

The second provision requires a provider that is ceasing operations in the state to notify its identity recovery service contract holders who have active contracts in effect and the Department regarding the fact that the provider is going out of business. In addition, the provider must provide certain information to the Department. While there may be some minimal economic cost to these requirements, the Department finds this to be a necessary cost of properly conducting business.

In the Service Contract Program, the Department has experienced several instances over the last few years of providers ceasing operations and not telling their service contract holders or the Department that they were going out of business and that they would no longer be honoring the service contracts. The service contract holders only find out weeks, months or even years later when they try to make claims on the service contracts and they discover that the provider is no longer in business. The Department often finds out when it starts receiving complaints from consumers or when the provider does not renew its registration with the Department the following year. Service contract providers like any other business entity should wind down business operations in an organized and proper manner and provide notice to customers that they will no longer be able to use the service contracts or receive the coverage for which they paid.

Again, the Identity Recovery Service Contract Program is modeled after the Service Contract Program and has the same regulatory structure and financial security provisions. For this program, the consumer purchases the identity recovery service contract from the automobile dealer at the time of vehicle purchase and finances the car and the identity recovery service contract over a number of years. Unless stated otherwise, the consumer believes that the coverage offered under the identity recovery service contract will last for as long as the consumer is making car payments. The consumer needs to know if the provider is going out of business and the identity recovery service contract coverage is ending before the consumer's installment payments end. The Department proposes that the same requirement that was proposed for the Service Contract Program rules also be included in the Identity Recovery Service Contract Program rules.

The Department has narrowly tailored this requirement and has not prescribed the method or format for notifying consumers or the Department, just the timing. In addition, the Department has limited the information required to be provided to the Department to that which is necessary to identify and handle potential complaints in the future from affected identity recovery service contract holders. The less burdensome alternative is not requiring the provider to notify identity recovery service contract holders with active contracts or the Department when it ceases operations. Other alternatives to the proposed rule would require the provider to provide additional information and would prescribe the method and format for doing so, which would probably be more burdensome and costly. The Department believes the proposed rules are a reasonable solution. The Department has attempted to minimize the potential for any economic costs to persons who are required to comply with the rules as proposed, while ensuring that the necessary information is provided to the public and the Department.

Comments on the proposal may be submitted by mail to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to [erule.comments@license.state.tx.us](mailto:erule.comments@license.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

The new rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. The new rules also are proposed under Texas Occupations Code, Chapter 1306, which establishes the identity recovery service contract program and gives regulatory authority of this program to the Commission and the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 1306. Texas Occupations Code, Chapters 1304 and 2306 are also affected because the definitions of "service contract" and "vehicle protection product" have been expanded to include identity recovery services. Texas Occupations Code, Chapter 1304 is also affected because the required financial security under Texas Occupations Code, Chapter 1304 may be used to meet the financial security requirements under Texas Occupations Code, Chapter 1306. No other statutes, articles, or codes are affected by the proposal.

#### §90.1. Authority.

This chapter is promulgated under the authority of Texas Occupations Code, Chapter 1306 and Texas Occupations Code, Chapter 51.

#### §90.10. Definitions.

The following words and terms, as used in this chapter and Texas Occupations Code, Chapter 1306, have the following meanings:

(1) "Identity recovery service contract seller" or "seller" means a person, other than the provider of the identity recovery service contract, who is responsible for marketing, offering, or selling service contracts, but is not contractually obligated to a identity recovery service contract holder under the terms of an identity recovery service contract.

(2) "Third-party administration of an identity recovery service contract" includes any of the following activities performed on behalf of an identity recovery service contract provider:

(A) performing or arranging the collection, maintenance, or disbursement of money to compensate any party for claims or repairs pursuant to an identity recovery service contract;

(B) participating in the processing or adjustment of claims arising under an identity recovery service contract;

(C) maintaining records required by Texas Occupations Code, Chapter 1306; or

(D) complying with provider requirements, other than financial security requirements, of Texas Occupations Code, Chapter 1306.

§90.20. Registration Requirements--Provider.

(a) No person may operate as a provider of identity recovery service contracts, or offer to be a provider of identity recovery service contracts, in this state without first registering with the Department, unless the identity recovery service contracts offered by such person are specifically exempt from the application of Texas Occupations Code, Chapter 1306.

(b) A registration is valid for one year from the date issued.

(c) Initial applications for registration must provide the Department with all of the following required information, on forms prescribed by the Executive Director:

(1) a completed registration form;

(2) a completed biographical affidavit from each controlling person as defined in Texas Occupations Code §1306.004;

(3) a completed criminal history questionnaire from each controlling person as defined in Texas Occupations Code §1306.004, if applicable;

(4) a list of administrator(s) appointed by the provider, if any, including each administrator's name, assumed name, street address, telephone number, and Department registration number;

(5) a list of sellers of the provider's service contracts, including each service contract seller's name, assumed name, street address, and telephone number;

(6) the required fee; and

(7) proof of financial security as prescribed under §90.40.

(d) Falsification of information on an application is cause for denial and/or revocation of the registration.

(e) The Department may refuse to issue a registration if the applicant or a controlling person of the applicant has violated Texas Occupation Code, Chapter 1306, this chapter, or a rule or an order issued by the Commission or Executive Director.

§90.21. Registration Renewal Requirements--Provider.

(a) In order for a provider to continue operating in this state, a registration must be renewed annually.

(b) Non-receipt of a registration renewal notice from the Department does not exempt a person from any requirements of this chapter.

(c) Renewal applications for registration must provide the Department with all of the following required information, on forms prescribed by the Executive Director:

(1) a completed registration form;

(2) a biographical affidavit from each controlling person as defined in Texas Occupations Code §1306.004, or a form indicating

there has been no change in the biographical affidavit since the previous registration or renewal from each controlling person;

(3) a completed criminal history questionnaire from each controlling person as defined in Texas Occupations Code §1306.004, if applicable;

(4) an updated list of administrator(s) appointed by the provider, if any, including each administrator's name, assumed name, street address, telephone number, and Department registration number;

(5) an updated list of sellers of the provider's service contracts, including each service contract seller's name, assumed name, street address, and telephone number;

(6) the required fee; and

(7) proof of new or continuing financial security as prescribed under §90.40.

(d) Falsification of information on an application is cause for denial and/or revocation of the registration.

(e) The Department may refuse to renew a registration if the applicant or a controlling person of the applicant has violated Texas Occupation Code, Chapter 1306, this chapter, or a rule or an order issued by the Commission or Executive Director.

(f) A person shall not perform work requiring registration under Texas Occupations Code, Chapter 1306 or this chapter with an expired registration.

§90.22. Ongoing Registration Requirements--Providers.

(a) A provider must pay quarterly fees based on the number of identity recovery service contracts sold or issued in this state.

(b) Not later than the 30th day after the date each calendar quarter ends, a provider must report to the Department, prescribed by the Executive Director, the number of identity recovery service contracts sold or issued to consumers in this state during the calendar quarter and submit to the Department a fee equal to one dollar (\$1) for each of those contracts.

(c) The calendar quarter ends on the following dates: March 31, June 30, September 30 and December 31. The due dates for reporting the number of contracts and submitting the appropriate fees under subsection (b) are: April 30, July 30, October 30, and January 30.

(d) Failure of the provider to report the number of contracts as described in subsection (b) is cause for denial and/or revocation of the registration.

(e) Failure of the provider to submit the fee as described in subsection (b) is cause for denial and/or revocation of the registration.

(f) Falsification of information required under subsection (b) is cause for denial and/or revocation of the registration.

§90.23. Registration Requirements--Administrator.

(a) No person may operate as an administrator for a provider or offer to act as an administrator for a provider operating in this state without first registering with the Department.

(b) A registration is valid for one year from the date issued.

(c) Initial applications for registration must provide the Department with all of the following required information, on forms prescribed by the Executive Director:

(1) a completed registration form;

(2) a list of providers for which the person will act as an administrator, including each provider's name, assumed name, street address, telephone number, and Department registration number;

(3) a list of the administrator's controlling persons as defined in Texas Occupations Code §1306.004; and

(4) the required fee.

(d) Falsification of information on an application is cause for denial and/or revocation of the registration.

(e) The Department may refuse to issue a registration if the applicant or a controlling person of the applicant has violated Texas Occupation Code, Chapter 1306, this chapter, or a rule or an order issued by the Commission or Executive Director.

§90.24. Registration Renewal Requirements--Administrator.

(a) In order for an administrator to continue operating in this state, a registration must be renewed annually.

(b) Non-receipt of a registration renewal notice from the Department does not exempt a person from any requirements of this chapter.

(c) Renewal applications for registration must provide the Department with all of the following required information, on forms prescribed by the Executive Director:

(1) a completed registration form;

(2) an updated list of providers for which the person will act as an administrator, including each provider's name, assumed name, street address, telephone number, and Department registration number;

(3) a list of the administrator's controlling persons as defined in Texas Occupations Code §1306.004; and

(4) the required fee.

(d) Falsification of information on an application is cause for denial and/or revocation of the registration.

(e) The Department may refuse to renew a registration if the applicant or a controlling person of the applicant has violated Texas Occupation Code, Chapter 1306, this chapter, or a rule or an order issued by the Commission or Executive Director.

(f) A person shall not perform work requiring registration under Texas Occupations Code, Chapter 1306 or this chapter with an expired registration.

§90.40. Financial Security--General Requirements.

(a) A provider must maintain financial security to ensure the faithful performance of a provider's obligations to its identity recovery service contract holders and for the benefit of those identity recovery service contract holders who suffer actual financial loss due to the provider's failure to perform those obligations.

(b) A provider must submit proof of one of the following three forms of financial security that meets the requirements of Texas Occupations Code §1306.101 and/or §1306.102:

(1) a reimbursement insurance policy;

(2) a funded reserve account and a security deposit; or

(3) net worth of at least \$100 million.

(c) All forms of financial security must be maintained by the provider for the entire time the provider continues to do business in this state or is registered to do business in this state.

(d) All forms of financial security must be kept in effect until the later of:

(1) two years after the provider ceases to do business in this state;

(2) two years after the provider's registration expires; or

(3) the Executive Director receives satisfactory proof from the provider and determines that the provider has discharged or otherwise adequately met all obligations to its identity recovery service contract holders in this state.

(e) If any form of financial security is canceled or lapses during the term of the provider's registration, the provider may not issue a new identity recovery service contract after the effective date of the cancellation or lapse, unless and until the provider files with the Executive Director a copy of a new form of financial security that meets the financial security requirements provided by Texas Occupations Code, Chapter 1306 and this chapter and that provides coverage after that date.

(f) Cancellation or lapse of the financial security does not affect the provider's liability for an identity recovery service contract issued by the provider before or after the effective date of the cancellation or lapse.

(g) If a provider registered under Texas Occupations Code, Chapter 1304 also registers under Texas Occupations Code, Chapter 1306, the financial security used to comply with Chapter 1304 may be used to fulfill the requirements of Chapter 1306 provided that:

(1) the provider identifies, in a manner prescribed by the Department, the names and registration numbers of both entities being covered by the financial security;

(2) the amount of financial security maintained must reflect the provider's combined financial obligations to its contract holders under Texas Occupations Code, Chapters 1304 and 1306; and

(3) the provider submits proof to the Department that the amount of financial security maintained reflects the provider's combined financial obligations to its contract holders under Texas Occupations Code, Chapters 1304 and 1306.

§90.41. Financial Security--Reimbursement Insurance Policy.

(a) A provider that uses a reimbursement insurance policy to comply with the financial security requirements of Texas Occupations Code §1306.101 and §1306.102, will not be allowed to obtain or renew a registration unless the insurer issuing the policy has provided all of the information and met all of the requirements set forth in Texas Occupations Code §1306.102(b).

(b) A reimbursement insurance policy that is used to comply with the financial security requirements of Texas Occupations Code §1306.101 and §1306.102 must include:

(1) the "Identity Recovery Service Contract Provider Texas Endorsement" prescribed by the Executive Director, or equivalent language; and

(2) copy of the approval letter from the Texas Department of Insurance for using the endorsement.

(c) If a reimbursement insurance policy, which is used to comply with the financial security requirements of Texas Occupations Code §1306.101 and §1306.102, is issued by a risk retention group, the provider must disclose to the Department:

(1) the identity of all of the policyholders/investors in the risk retention group; and

(2) the percentage of ownership of each policyholder/investor.

§90.42. Financial Security--Funded Reserve Account and Security Deposit.



(a) A provider that uses a funded reserve account and security deposit to comply with the financial security requirements of Texas Occupations Code §1306.101, will not be allowed to obtain or renew a registration unless the provider:

(1) maintains the funded reserve account and the security deposit at or above the financial levels required under Texas Occupations Code §1306.101(b); and

(2) meets the requirements under this section.

(b) The funded reserve account maintained by the provider must:

(1) be kept separate from the provider's operating accounts; and

(2) not be used for any purpose other than to cover the provider's obligations under its identity recovery service contracts that are issued and outstanding in this state.

(c) In addition to maintaining the funded reserve account, the provider must submit one of the following forms of security deposit:

(1) A surety bond that:

(A) is issued by a surety company authorized to do business in the State of Texas;

(B) conforms to the Texas Insurance Code;

(C) is on a Department-approved form;

(D) is payable to the Executive Director for the satisfaction of eligible identity recovery service contract holder claims; and

(E) states that the surety company will provide the Department 60 days prior written notice of its intent to cancel the bond;

(2) A certificate of deposit that is assigned to the Executive Director;

(3) Securities of the type eligible for deposit by an authorized insurer in Texas;

(4) A deposit of cash or cash equivalents; or

(5) An original letter of credit that:

(A) is irrevocable;

(B) is issued by a qualified financial institution which is financially responsible in the amount of the letter of credit;

(C) does not require examination of the performance of the underlying transaction between the Department and the provider;

(D) is payable to the Department on demand or within a reasonably brief period of time after presentation of all required documents; and

(E) does not include any condition that makes payment to the Department contingent upon the consent of or other action by the provider or other party.

#### §90.43. Financial Security--Minimum Net Worth.

A provider that maintains, or has a parent company maintain, a net worth or stockholder's equity of at least \$100 million to comply with the financial security requirements of Texas Occupations Code §1306.101, will not be allowed to obtain or renew a registration unless the provider gives the Department audited financial statements as described under Texas Occupations Code §1306.101(c) and (d) or information for accessing and viewing the proof of net worth online.

#### §90.70. Responsibilities of Registrant--Provider and Administrator.

(a) The provider must clearly and conspicuously identify itself on all written identity recovery service contracts and advertising materials that are used by the provider, its administrator(s), or its seller(s).

(b) The provider and/or any administrator appointed by the provider must provide identity recovery service contract holders with a notification that meets all of the following requirements.

(1) The notification must provide the name, mailing address, and telephone number of the Department.

(2) The notification must contain a statement that unresolved complaints concerning a registrant or questions concerning the regulation of identity recovery service contract providers and administrators may be addressed to the Department.

(3) The notification must be included on all written identity recovery service contracts. The notification may be stamped on the contract or printed on a separate sheet and stapled to the contract.

(c) The provider and/or any administrator appointed by the provider must provide identity recovery service contract holders with the provider's complaint resolution procedures.

(d) The provider and/or any administrator appointed by the provider must disclose the following information to identity recovery service contract holders in writing and in clear understandable language that is easy to read:

(1) the person or persons who are covered under the identity recovery service contract;

(2) the price of the identity recovery service contract separate from the purchase price of the automobile and any other products or services that are financed with the vehicle;

(3) the term of the identity recovery service contract;

(4) any conditions that may change the stated term of the identity recovery service contract, including if the identity recovery service contract holder:

(A) pays off the automobile early;

(B) makes late payments or defaults on the payments on the automobile;

(C) refinances the automobile; or

(D) sells or transfers title to the automobile;

(5) all required disclosures in accordance with Texas Occupations Code §1306.106;

(6) any exclusions, limitations, conditions or restrictions regarding the scope of services, cancellation, or transferability of the identity recovery service contract in accordance with Texas Occupations Code §1306.106;

(7) the procedures and timeframes for returning an identity recovery service contract in accordance with Texas Occupations Code §1306.107;

(8) the procedures and timeframes for voiding an identity recovery service contract in accordance with Texas Occupations Code §1306.108;

(9) the procedures and timeframes for refunding the purchase price of the identity recovery service contract to the identity recovery service contract holder in accordance with Texas Occupations Code §1306.108; and

(10) the conditions in which the provider and/or administrator may cancel an identity recovery service contract in accordance with Texas Occupations Code §1306.109.

(e) The provider and/or any administrator appointed by the provider must provide a copy of the identity recovery service contract to the identity recovery service contract holder within 45 days from the date of purchase.

(f) The provider and/or any administrator appointed by the provider must provide a receipt for or other written evidence of the purchase of an identity recovery service contract to the identity recovery service contract holder within 45 days from the date of purchase.

(g) The provider is responsible for the seller's marketing and sales activities as they relate to the marketing and sale of the provider's identity recovery service contracts.

(h) A provider shall report to the Department within 30 days any change in information required by §90.20 and §90.21.

(i) An administrator shall report to the Department within 30 days any change in information required by §90.23 and §90.24.

(j) Upon notification by the Department, the provider and/or any administrator appointed by the provider shall allow the Department to audit records required to be maintained by Texas Occupations Code, Chapter 1306. These records include copies of the identity recovery service contracts marketed, sold, administered or issued in this state.

(k) A provider must notify the Department no later than 60 days prior to the provider ceasing operations in this state. A provider must notify the Department as soon as possible after the provider files for bankruptcy or is placed into receivership and must provide the contact information for the bankruptcy trustee or receiver and the court handling these proceedings.

(l) Within 10 days after notifying the Department in accordance with subsection (k), a provider must submit to the Department:

(1) the name(s) and the number of the active identity recovery service contracts affected;

(2) the names and addresses of the identity recovery service contract holders with active identity recovery service contracts in this state and the remaining amount of time left on these active identity recovery service contracts; and

(3) any other information determined necessary by the Department relating to the provider ceasing operations and/or terminating registration in this state.

(m) A provider must notify identity recovery service contract holders with active identity recovery service contracts in this state no later than 30 days prior to the provider ceasing operations in this state. The provider remains financially responsible to identity recovery service contract holders with active identity recovery service contracts in this state.

#### §90.80. Fees.

(a) All registration fees are non-refundable.

(b) Provider Fees

(1) The initial registration fee for a provider is \$1,000.

(2) The annual renewal registration fee for a provider is \$1,000.

(3) The quarterly contract fee for a provider is \$1 per contract sold or issued in the state in the previous calendar quarter as provided under §90.22.

(c) Administrator Fees

(1) The initial registration fee for an administrator is \$1,000.

(2) The annual renewal registration fee for an administrator is \$250.

(d) The fee for a duplicate or amended registration certificate is \$25.

(e) Late renewal fees for registrations issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

#### §90.90. Administrative Penalties and Sanctions.

If a person violates any provision of Texas Occupations Code, Chapter 1306, this chapter, or any rule or order of the Executive Director or Commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapter 1306; Texas Occupations Code, Chapter 51; and any associated rules.

#### §90.91. Enforcement Authority

The enforcement authority granted under Texas Occupations Code, Chapters 51 and 1306 and any associated rules may be used to enforce Texas Occupations Code, Chapter 1306 and this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 24, 2009.

TRD-200903730

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: October 4, 2009

For further information, please call: (512) 463-7348



## PART 9. TEXAS LOTTERY COMMISSION

### CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

#### SUBCHAPTER C. BINGO GAMES AND EQUIPMENT

##### **16 TAC §402.304**

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Lottery Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Lottery Commission (Commission) proposes the repeal of 16 TAC §402.304 (System Service Provider).

The purpose of the proposed repeal is to eliminate a rule that is no longer needed as a result of the 81st Legislature's repeal of Texas Occupations Code, Chapter 2001, Subchapter F pertaining to System Service Provider License.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed repeal will be in effect, there will be

no significant fiscal impact for state or local governments as a result of the proposed repeal. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the repeal as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed repeal will be in effect, the public benefit anticipated is elimination of a rule that is unnecessary.

The Commission requests comments on the proposed repeal from any interested person. Comments on the proposed repeal may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at [www.legal.input@lottery.state.tx.us](mailto:www.legal.input@lottery.state.tx.us). The Commission will hold a public hearing on this proposal at 10:00 a.m. on Thursday, September 17, 2009, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The repeal is proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed repeal implements Texas Occupations Code, Chapter 2001.

*§402.304. System Service Provider.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 20, 2009.

TRD-200903658

Sandra Joseph

Special Counsel

Texas Lottery Commission

Earliest possible date of adoption: October 4, 2009

For further information, please call: (512) 344-5012



## SUBCHAPTER D. LICENSING REQUIREMENTS

### 16 TAC §402.406

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §402.406 (Bingo Chairperson). The purpose of the proposed amendments is to remove language that is unnecessary because it will be contained in Texas Occupations Code, §2001.002(4-a) as a result of recent legislation, House Bill 1474, effective October 1, 2009.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no ad-

verse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code, §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit anticipated is the elimination of unnecessary language.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at [www.legal.input@lottery.state.tx.us](mailto:www.legal.input@lottery.state.tx.us). The Commission will hold a public hearing on this proposal at 10:00 a.m. on Thursday September 17, 2009, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed amendments implement Texas Occupations Code, Chapter 2001.

*§402.406. Bingo Chairperson.*

A licensed authorized organization must have an active officer or member of the board of directors designated as the bingo chairperson at all times. [The bingo chairperson is responsible for overseeing the organization's bingo activities and reporting to the membership relating to those activities.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 20, 2009.

TRD-200903656

Sandra Joseph

Special Counsel

Texas Lottery Commission

Earliest possible date of adoption: October 4, 2009

For further information, please call: (512) 344-5012



### 16 TAC §402.420

The Texas Lottery Commission (Commission) proposes new rule 16 TAC §402.420 (Qualifications and Requirements for Conductor's License). The purpose of the proposed new rule is to clearly set forth the qualifications, requirements and documentation needed for an application to conduct charitable bingo.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed new rule will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses, micro businesses, or local or state em-

ployment. There will be no additional economic cost to persons required to comply with the amendments as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed new rule will be in effect, the public benefit anticipated from the adoption of the new rule is to provide applicants for an original license to conduct bingo specific requirements and what minimum documentation is required when applying for a license to conduct charitable bingo and to ensure that only qualified organizations are licensed.

The Commission requests comments on the proposed new rule from any interested person. Comments on the proposed new rule may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at [www.legal.input@lottery.state.tx.us](mailto:www.legal.input@lottery.state.tx.us). The Commission will hold a public hearing on this proposal at 10:00 a.m. on Thursday September 17, 2009, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The new rule is proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed new rule implements Texas Occupations Code, Chapter 2001.

§402.420. Qualifications and Requirements for Conductor's License.

An applicant must provide with its application documentation demonstrating that it meets all qualifications and requirements for a license to conduct bingo based on the type of organization it is. The qualifications, requirements, and necessary documentation for different types of organizations are shown in the chart below.

Figure: 16 TAC §402.420

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 20, 2009.

TRD-200903657

Sandra Joseph

Special Counsel

Texas Lottery Commission

Earliest possible date of adoption: October 4, 2009

For further information, please call: (512) 344-5012



## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 6. HEALTH EDUCATION, TRAINING, AND RESEARCH FUNDS

## SUBCHAPTER D. TEXAS HOSPITAL-BASED NURSING EDUCATION GRANT PROGRAM

### 19 TAC §§6.81 - 6.83

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§6.81 - 6.83, concerning Texas Hospital-Based Nursing Education Grant Program. The proposed amendments relate to the Board's criteria and process for awarding grants under the Texas Hospital-Based Nursing Education Partnership Grant Program and provide information on the application process, methodology and criteria for awarding grants and making funding decisions, and the terms and conditions of the grant agreements.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the chapter is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering this chapter.

Dr. Stephenson has also determined that for each year of the first five years the chapter is in effect, the public benefit anticipated as a result of administering the chapter would be an increase in the number of nurses, thus helping to relieve the state's nursing shortage. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the chapter as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dr. MacGregor Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or [macgregor.stephenson@thehb.state.tx.us](mailto:macgregor.stephenson@thehb.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amended sections are proposed under the Texas Education Code, §61.9756 which provides the Coordinating Board with the authority to establish rules for the grant programs.

The amended sections affect the Texas Education Code, §§61.9751 - 61.9759.

#### §6.81. Purpose and Authority.

(a) This [The purpose of this] subchapter describes [is to describe] the Board's criteria and process for awarding grants under the Texas Hospital-Based [Hospital-based] Nursing Education Partnership Grant Program. This program is designed to establish and/or expand innovative nursing degree programs to increase the number of students enrolled in and graduating from such programs. [The Board is authorized to establish rules for this grant program under Texas Education Code §§61.9751 - 61.9759.]

(b) These sections relate to Texas Education Code, Chapter 61, Subchapter EE, §§61.9751 - 61.9759, which authorize the Board to establish rules for providing funding to eligible hospitals in partnership with one or more nursing schools under the Texas Hospital-Based Nursing Education Partnership Grant Program.

#### §6.82. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (3) (No change.)

[(4) Nursing school--An educational entity of a Texas public or independent institution of higher education that offers a degree

program that prepares students for initial licensure as registered nurses and that has initial or full approval status from the Texas Board of Nursing on the date that grant applications are due to the Board.]

(4) ~~[(5)]~~ Hospital-based nursing education partnership--A partnership that: [One or more hospitals as defined in paragraph (3) of this section and one or more nursing schools as defined in paragraph (4) of this section which serve to increase the number of students enrolled in and graduating from one or more degree programs as a result of a partnership.]

(A) consists of one or more hospitals in this state that are not owned, maintained, or operated by the federal or state government or an agency of the federal or state government and one or more nursing education programs in this state; and

(B) serves to increase the number of students enrolled in and graduating from one or more degree programs as a result of the partnership.

(5) Nursing Education Program--Refers to an undergraduate or graduate professional nursing education program as defined below:

(A) Undergraduate professional nursing program--A public or private educational program for preparing students for initial licensure as registered nurses.

(B) Graduate professional nursing program--An educational program of a public or private institution of higher education that prepares students for a master's or doctoral degree in nursing.

~~[(6)]~~ Degree program--Courses and learning experiences leading to:]

~~[(A)]~~ an associate degree in nursing:]

~~[(B)]~~ a baccalaureate degree in nursing, leading to initial licensure as a registered nurse:]

~~[(C)]~~ a master's degree in nursing with a concentration in nursing education; and]

~~[(D)]~~ an academic program designed to advance a registered nurse from an associate degree to a bachelor of science degree in nursing or to a master of science degree in nursing with a concentration in nursing education.]

*§6.83. General Information [Texas Hospital-Based Nursing Education Grant Program].*

(a) To be considered for a grant under the Texas Hospital-Based Nursing Education Partnership Grant Program, a program must be determined to be eligible to apply.

(1) An eligible degree program is one that offers degree programs through hospital-based nursing education partnerships which:

(A) provide courses and learning experiences leading to:

(i) an associate degree in nursing;

(ii) a baccalaureate degree in nursing, leading to initial licensure as a registered nurse;

(iii) a master's degree in nursing with a concentration in nursing education; and/or

(iv) an academic program designed to advance a registered nurse from an associate degree to a bachelor of science degree in nursing with a concentration in nursing education or to a master of science degree in nursing with a concentration in nursing education.

~~[(a)]~~ General Information- The program, as it applies to this section:]

~~[(1)]~~ Purpose--To provide funding to eligible hospitals in partnership with one or more nursing schools to establish, expand or pilot innovative degree programs which serve to increase the number of students enrolled in and graduating from nursing degree programs.]

~~[(2)]~~ Authority--Texas Education Code, §§61.9751 - 61.9759]

~~[(3)]~~ Eligible degree program--Degree programs offered through hospital-based nursing education partnerships which:]

~~[(B)]~~ [(A)] use existing expertise and facilities of the partners. This restriction does not prohibit a hospital or nursing school from requesting grant funds to support reasonable development and initial implementation costs necessary to support a new degree program. Hospitals and nursing schools proposing an expansion of an existing degree program may request grant funds to support reasonable development and implementation costs for expanding the degree program with the specific intent to increase the number of students enrolled. Hospitals and nursing schools in existing partnerships may not request grant funds for initial or on-going costs incurred in operating an existing degree program. The Commissioner shall make the final determination of a partnership's eligibility for funding to support development and initial implementation costs.

~~[(C)]~~ [(B)] meet applicable Board and Texas Board of Nursing standards for instruction and student competency, or if Texas Board of Nursing standards are not met receive approval from [the Board and] the Texas Board of Nursing to waive those standards as a pilot project. [The application for approval of a pilot project will be contained in the Request for Proposal;]

~~[(D)]~~ [(C)] require each nursing school participating in the partnership, as a result of the partnership, to enroll in the degree program a sufficient number of additional students. [as specified in the Request for Proposal;]

~~[(E)]~~ [(D)] propose a [provide comparable] marginal cost [costs] to the partnership for [state of] producing a nursing graduate [from a nursing school] that is equal to or less than [participating in partnership with] the marginal cost [costs] to the state for [of] producing a nursing graduate [from a nursing school not participating in a partnership]. The state marginal cost is defined as all formula funding appropriations to nursing education programs on a full-time student equivalent basis. The range of acceptable marginal costs will be calculated by the Board and contained in the Request for Application. [Proposal. Criteria used to determine marginal costs are based on the appropriate formula funding calculation for nursing increased by a factor to adjust to the full reported costs of a representative sample of the nursing schools. The Board may differentiate marginal costs by type of institution or by other institutional or educational characteristics which better reflect the actual costs of different kinds of partnerships.]

~~[(F)]~~ [(E)] provide students with appropriate clinical placements to fulfill licensing and academic requirements of the degree.

~~[(2)]~~ [(4)] Application requirements.[--] Applications for funding shall be submitted to the Board in the format and at the time specified by the Board.

~~[(3)]~~ [(5)] General Selection Criteria shall be[--Competitive.] designed [Designed] to award grants that provide the best overall value to the state. Selection criteria shall be based on:

~~[(A)]~~ program [Program] quality as determined by peer reviewers;

(B) ~~impact [Impact]~~ the grant award will ~~[shall]~~ have on academic instruction and training in nursing education in the state;

(C) ~~cost [Cost]~~ of the proposed program; and

(D) ~~other [Other]~~ factors to be considered by the Board, including financial ability to ~~implement [perform]~~ the program, state and regional needs and priorities, ability to continue the program after the grant period, and past performance.

~~[(6) Minimum award—\$50,000 per award in any fiscal year.]~~

~~[(7) Maximum award—30 percent of the estimated available funding per award in any fiscal year.]~~

(4) ~~[(8)]~~ Maximum award length.~~[-]~~ A program is eligible to receive funding for up to three years, contingent upon available funds, submission of required documents, ~~[and]~~ a positive evaluation of ~~[the]~~ progress, and a positive evaluation of the effectiveness of the program after the first and second years of funding.

(b) Peer Review.

(1) - (2) (No change.)

(3) ~~[The]~~ Board staff shall provide written instructions and training for peer reviewers.

(4) The peer reviewers shall score each application according to these award criteria which incorporate the specific priority criteria stated in Texas Education Code, §61.9754:

(A) Partnership design, including: ~~[Originality;]~~

~~(i) structure of partner participation;~~

~~(ii) provision of access to clinical training positions for nursing education students in programs not participating in the partnership;~~

~~(iii) provision for tracking post-graduation employment of students in a nursing education program participating in the partnership.~~

(B) Evaluation and expected outcomes, including: ~~[Potential replication;]~~

~~(i) increase in student enrollment and graduation and in the number of nursing faculty employed by each nursing education program participating in the partnership;~~

~~(ii) improvement in student retention in each nursing education program.~~

(C) Availability of funds to match all or a portion of the grant funds; ~~[Partnership design;]~~

(D) Provision for completion of a class admitted under this project to be funded by all members of the partnership if the funded project ends before the class graduation date; ~~[Degree program design;]~~

(E) Potential replication; and ~~[Student services;]~~

(F) Sustainability of partnership beyond the grant period. ~~[Matching funds;]~~

~~[(G) Cost effectiveness;]~~

~~[(H) Evaluation and expected outcomes; and]~~

~~[(I) Sustainability of program.]~~

(c) Application Review Process.

(1) The Board staff shall review applications to determine if they adhere to the grant program requirements and the funding pri-

orities contained in the Request for ~~Application [Proposal]~~. ~~An application must meet the requirements of the Request for Proposal and be submitted with proper authorization before or on the day specified by the Board to qualify for further consideration.]~~ Qualified applications shall be forwarded to the peer reviewers for evaluation. Board staff shall notify applicants eliminated through the screening process within 30 days of the submission deadline.

(2) (No change.)

(3) Board staff shall rank each application based on points assigned by peer reviewers, and ~~[then]~~ may request that individuals representing the most highly-ranked applications make oral presentations on their applications to the peer reviewers and Board staff. The Board staff may consider reviewer comments from the oral presentations in recommending a priority-ranked ~~[priority ranked]~~ list of applications to the Commissioner for approval.

(d) Funding Decisions.

(1) - (2) (No change.)

(3) Funding recommendations to the Board ~~[Commissioner]~~ shall consist of the most highly ranked and recommended applications up to the limit of available funds. If available funds are insufficient to fund a proposal after the higher-ranking and recommended applications have been funded, staff shall negotiate with the applicant to determine if a lesser amount would be acceptable. If the applicant does not agree to the lesser amount, the staff shall negotiate with the next applicant on the list of highly ranked applications.

(4) (No change.)

(e) Contract. Following approval of grant awards by the Board ~~[Commissioner]~~, the successful applicants must sign a contract issued by Board staff and based on the information contained in the application.

(f) Cancellation or Suspension of Grants. The Board has the right to reject all applications and cancel a grant solicitation at any point ~~[before a contract is signed]~~.

(g) Request for Proposal. The full text of the administrative regulations, budget guidelines, reporting requirements, and other standards of accountability for this program are contained in the official Request for ~~Application [Proposal]~~ available upon request from the Board.

(h) - (i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 24, 2009.

TRD-200903710

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: October 29, 2009

For further information, please call: (512) 427-6114

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PART 2. TEXAS EDUCATION AGENCY  
CHAPTER 61. SCHOOL DISTRICTS  
SUBCHAPTER AA. COMMISSIONER'S  
RULES ON SCHOOL FINANCE

## 19 TAC §61.1013

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Education Agency (TEA) proposes the repeal of §61.1013, concerning additional funding for certain school districts. The section implements the provision of additional state aid for certain school districts through the 2002-2003 school year. The proposed repeal is necessary because of the expiration of the rule and of its authorizing statute, the Texas Education Code (TEC), §42.2513, as added by House Bill (HB) 3343, 77th Texas Legislature, 2001.

The TEC, §42.2513, as added by HB 3343, 77th Texas Legislature, 2001, authorized the commissioner of education to adopt rules to implement the provision of additional state aid for certain school districts through the 2002-2003 school year. The commissioner exercised rulemaking authority to adopt 19 TAC §61.1013, Gap Funding, effective December 2, 2001.

The TEC, §42.2513, as added by HB 3343, 77th Texas Legislature, 2001, specified an expiration date of September 1, 2003, for the section. In addition, 19 TAC §61.1013(e) specifies an expiration date of September 1, 2003, in alignment with statute.

The proposed repeal of 19 TAC §61.1013 would repeal a section that has expired and whose statutory authorization has expired.

The proposed repeal would have no procedural and reporting implications. The proposed repeal would have no locally maintained paperwork requirements.

Shirley Beaulieu, associate commissioner for finance/chief financial officer, has determined that for the first five-year period the repeal is in effect there will be no additional costs for state or local government as a result of enforcing or administering the repeal.

Ms. Beaulieu has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal would be the reflection of statutory changes and the removal of obsolete provisions from rule.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins September 4, 2009, and ends October 5, 2009. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register* on September 4, 2009.

The repeal is proposed under the TEC, §42.2513, as added by House Bill 3343, 77th Texas Legislature, 2001, which authorized the commissioner of education to adopt rules to implement the provision of additional funding for certain school districts through the 2002-2003 school year. The TEC, §42.2513, as added by House Bill 3343, 77th Texas Legislature, 2001, expired effective September 1, 2003.

The repeal implements the TEC, §42.2513, as added by House Bill 3343, 77th Texas Legislature, 2001.

### §61.1013. Gap Funding.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 24, 2009.

TRD-200903707

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: October 4, 2009

For further information, please call: (512) 475-1497



## PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

### CHAPTER 239. STUDENT SERVICES CERTIFICATES

The State Board for Educator Certification (SBEC) proposes amendments to §§239.1, 239.5, 239.10, 239.15, 239.20, 239.25, 239.30, 239.40, 239.45, 239.50, 239.55, 239.60, 239.65, 239.70, 239.80 - 239.86, 239.90 - 239.95, and 239.100 - 239.104, concerning provisions for student services certificates. The sections provide for rules that establish requirements for minimum admission, preparation, standards, issuance, renewal, and transition and implementation dates for the school counselor, school librarian, educational diagnostician, and reading specialist certificates. In addition, the rules establish certification requirements for master teacher certificates in the subject areas of reading, mathematics, technology, and science.

The proposed amendments to 19 TAC Chapter 239 would update the rules to reflect current law relating to the school counselor certificate, school librarian certificate, educational diagnostician certificate, reading specialist certificate, and master teacher certificate. The proposed amendments result from the SBEC's rule review conducted in accordance with Texas Government Code, §2001.039.

The proposed amendments reflect discussions held during the June 29, 2009, stakeholder meeting. Following is a description of the proposed amendments.

#### *Subchapter A. School Counselor Certificate*

Language in 19 TAC §239.1(c) would be amended to clarify that the holder of the school counselor certificate may provide counseling services to all students in Prekindergarten-Grade 12. Language would be amended in §239.10(a), relating to field-based training experiences, to provide consistency with language in current 19 TAC §239.50(a). Language would be amended in §239.20(2) to clarify that the examination would be based on standards in 19 TAC §239.15, Standards for the School Counselor Certificate.

#### *Subchapter B. School Librarian Certificate*

Language in 19 TAC §239.40(c) would be amended to clarify that the holder of the school librarian certificate may serve as a librarian in Prekindergarten-Grade 12. Language would be added in §239.60(2) to clarify that the examination would be based on

standards in 19 TAC §239.55, Standards for the School Librarian Certificate.

#### *Subchapter C. Educational Diagnostician Certificate*

Language in 19 TAC §239.80(c) would be amended to clarify that the educational assessment and evaluation is required by law and that the grade level designation for the holder of the educational diagnostician certificate is from Early Childhood-Grade 12. Language would be amended in §239.82(a), relating to field-based training experiences, to provide consistency with language in current 19 TAC §239.50(a). Language would be added in §239.81(a)(2) and §239.84 to specify that a classroom teaching certificate would be required for admission to an educator preparation program and for the issuance of the educational diagnostician certificate. Language would be added in §239.84(2) to clarify that the examination would be based on standards in 19 TAC §239.83, Standards for the Educational Diagnostician Certificate.

#### *Subchapter D. Reading Specialist Certificate*

Language in 19 TAC §239.90(c) would be amended to clarify that the grade level designation for the holder of the reading specialist certificate would be Prekindergarten-Grade 12. Language would be amended in §239.92(a), relating to field-based training experiences, to provide consistency with language in current 19 TAC §239.50(a).

#### *Subchapter E. Master Teacher Certificate*

Language in 19 TAC §239.100 would be amended to clarify the master teacher certificate provisions. Language would be amended in §239.101(b) to clarify that the grade level designations for the holder of the master reading teacher certificate would be Prekindergarten-Grade 12. Language would be added in §239.103(e) to align the provision for course of instruction with the master mathematics teacher certificate in §239.102(d) and the master science teacher certificate in §239.104(c).

#### *Technical Changes*

Throughout Chapter 239, numerous grammatical and technical changes are proposed, such as the term "preparation program" would be replaced by the term "educator preparation program"; "assessments" would be replaced by the term "examination" where appropriate; "admitted individual" would be replaced by the term "candidate"; "hours" would be replaced by the term "clock-hours"; "district" would be replaced by the term "school district"; and "campus" would be replaced by the term "school campus." Language would be amended to clarify that accrediting organizations must be recognized by the Texas Higher Education Coordinating Board. Language would be amended to specify creditable years instead of school years of teaching experience. Also, statutory citation references would be updated and standardized to reflect current law and *Texas Register* formatting requirements.

References to other SBEC rules would be updated and/or added as part of the proposed amendments to 19 TAC Chapter 239. For example, language in §§239.20(4), 239.60(4), 239.84(5), 239.93(4), 239.101(c)(2)(A), 239.102(c)(2), 239.103(c)(2)(A), and 239.104(b)(2) would be amended to add a reference to 19 TAC Chapter 153, School District Personnel, Subchapter CC, Commissioner's Rules on Creditable Years of Service.

The proposed amendments would have no procedural and reporting implications. Also, the proposed amendments would have no locally maintained paperwork requirements.

Jerel Booker, associate commissioner for educator quality and standards, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Mr. Booker has determined that for the first five-year period the proposed amendments are in effect the public and student benefit anticipated as a result of the proposed amendments would be the continuation of requirements relating to the school counselor, school librarian, educational diagnostician, reading specialist, and master teacher certificates. There are no additional costs to persons or entities required to comply with the proposed amendments.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [sbecrules@tea.state.tx.us](mailto:sbecrules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and Standards, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Jerel Booker, not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

## SUBCHAPTER A. SCHOOL COUNSELOR CERTIFICATE

### **19 TAC §§239.1, 239.5, 239.10, 239.15, 239.20, 239.25, 239.30**

The amendments are proposed under the Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.040(4), which states that the SBEC shall for each class of educator certificate, appoint an advisory committee composed of members of that class to recommend standards for that class to the board; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(5), which requires the SBEC to propose rules that provide for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to the TEC, §21.052; §21.044, which authorizes the SBEC to propose rules establishing the training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program and specify the minimum academic qualifications required for a certificate; §21.048(a), which requires the SBEC to propose



rules prescribing comprehensive examinations for each class of certificate issued by the SBEC; §21.054, which requires the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements; and §22.0831(f), which authorizes the SBEC to propose rules to implement the national criminal history record information review of certified educators.

The proposed amendments implement the TEC, §§21.031(a), 21.040(4), 21.041(b)(1) - (5), 21.044, 21.048(a), 21.054, and 22.0831(f).

*§239.1. General Provisions.*

(a) Because the school counselor plays a critical role in campus effectiveness and student achievement, the rules adopted by the State Board for Educator Certification [adopts the rules] in this subchapter [to] ensure that each candidate for the School Counselor Certificate [school counselor certificate] is of the highest caliber and possesses the knowledge and skills necessary to improve the performance of the diverse student population of this state.

(b) An [Each] individual serving as a school counselor is expected to actively participate in professional development activities to continually update his or her knowledge and skills. Currency in best practices and research as related to both campus leadership and student learning is essential.

(c) The holder of the School Counselor Certificate [a school counselor certificate] issued under the provisions of this subchapter [chapter] may provide counseling services to all students in Prekindergarten-Grade 12 [regular education programs; career and technology education programs and special education programs in pre-kindergarten through grade 12].

*§239.5. Minimum Requirements for Admission to a School Counselor Preparation Program.*

(a) Prior to admission to an educator [a] preparation program leading to the School Counselor Certificate [school counselor certificate], an individual must:

(1) hold a baccalaureate degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board; and

(2) meet the requirements for admission to an educator preparation program under Chapter 227 of this title (relating to Provisions for Educator Preparation Candidates [Students] ).

(b) An educator preparation program [Preparation programs] may adopt requirements for admission in addition to those required in subsection (a) of this section.

*§239.10. Preparation Program Requirements.*

(a) Structured, field-based training must be focused on actual experiences with each of the standards identified in §239.15 of this title [subchapter] (relating to Standards Required for the School Counselor Certificate) to include experiences with [at] diverse types of students, grade levels, and campuses.

(b) An educator [Each] preparation program must develop and implement specific criteria and procedures that allow a candidate [admitted individuals] to substitute related professional counselor training and/or [or] experience directly related to the standards identified in §239.15 of this title [subchapter] for part of the preparation coursework or other program requirements.

*§239.15. Standards Required for the School Counselor Certificate.*

(a) School Counselor Certificate Standards. The knowledge and skills identified in this section must be used by an educator prepa-

ration program [school counselor preparation programs] in the development of curricula and coursework and [will be used] by the State Board for Educator Certification as the basis for developing the examination [assessments] required to obtain the School Counselor Certificate [appropriate school counselor certificates]. The [These] standards [must] also serve as the foundation for the professional growth plan[;] and continuing professional education activities required by §239.25 of this title [subchapter] (relating to Requirements to Renew the Standard School Counselor Certificate).

(b) Standard I. Learner-Centered Knowledge: The certified school counselor has a broad knowledge base. The certified school counselor must know and understand:

- (1) the history of counseling;
- (2) counseling and consultation theories and practices;
- (3) career development theories and practices;
- (4) assessment principles and procedures, including the appropriate use of tests and test results;
- (5) changing societal trends, including demographic, economic, and technological tendencies, and their relevance to school counseling;
- (6) environmental, social, and cultural factors that affect learners' development and the relevance of those factors to guidance and counseling programs;
- (7) learners' developmental characteristics and needs and their relevance to educational and career choices;
- (8) legal and ethical standards, practices, and issues;
- (9) the characteristics and educational needs of special populations;
- (10) theories and techniques in pedagogy and classroom management;
- (11) the integration of the guidance and academic curricula;
- (12) the roles and responsibilities of the counselor in a developmental guidance and counseling program that is responsive to all students; and
- (13) counseling-related research techniques and practices.

(c) Standard II. Learner-Centered Skills: The certified school counselor applies the knowledge base to promote the educational, personal, social, and career development of the learner. The certified school counselor must:

- (1) develop processes and procedures for planning, designing, implementing, and evaluating a developmental guidance and counseling program;
- (2) provide a proactive, developmental guidance program based on the needs of students;
- (3) counsel individuals and small groups using appropriate counseling theories and techniques in response to students' needs;
- (4) consult with parents/guardians, teachers, administrators, and other individuals as appropriate to enhance their work with students;
- (5) coordinate resources for students within the school and community;
- (6) demonstrate proficiency in teaching small and large groups by actively engaging students in the learning process;

(7) participate in the selection, use, and interpretation of assessments and assessment results;

(8) use varied sources of information about students for assessment purposes;

(9) use counseling-related research techniques and practices to address student needs; and

(10) advocate for a developmental guidance and counseling program that is responsive to all students.

(d) Standard III. Learner-Centered Process: The certified school counselor participates in the development, monitoring, and evaluation of a developmental school guidance and counseling program that promotes learners' knowledge, skills, motivation, and personal growth. The certified school counselor must:

(1) collaborate with others in the school and community to implement a guidance curriculum that promotes learners' development in all domains, including cognitive, social, and emotional areas;

(2) facilitate learners' ability to achieve their potential by helping them set and attain challenging educational, career, and personal/social goals based on various types of information;

(3) use both preventive and intervening strategies to address the concerns of learners and to help them clarify problems and situations, set goals, explore options, and implement change;

(4) implement effective referral procedures to facilitate the use of special programs and services; and

(5) act as a consultant and/or coordinator to help learners achieve success inside and outside of school.

(e) Standard IV. Learner-Centered Equity and Excellence for All Learners: The certified school counselor promotes academic success for all learners by acknowledging, respecting, and responding to diversity while building on similarities that bond all people. The certified school counselor must:

(1) understand learner differences, including those related to cultural background, gender, ethnicity, and learning styles, and know ways to create and maintain a positive school environment that is responsive to all learners;

(2) advocate for a school environment in which diversity is acknowledged and respected, resulting in positive interactions across cultures; and

(3) facilitate learning and achievement for all students, including special populations, by promoting a cooperative, inclusive, and purposeful learning environment.

(f) Standard V. Learner-Centered Communications: The certified school counselor, an advocate for all students and the school, demonstrates effective professional and interpersonal communication skills. The certified school counselor must:

(1) demonstrate effective communication through oral, written, and nonverbal expression;

(2) use knowledge of group dynamics and productive group interaction;

(3) support responsive interventions by effectively communicating with parents/guardians, teachers, administrators, and community members;

(4) facilitate learners' access to community resources;

(5) develop and implement strategies for effective internal and external communications;

(6) facilitate parent/guardian involvement in their children's education;

(7) develop partnerships with parents/guardians, businesses, and other groups in the community to facilitate learning; and

(8) work effectively as a team member to promote positive change for individuals, groups, and the school community.

(g) Standard VI. Learner-Centered Professional Development: The certified school counselor continues professional development, demonstrating a commitment to learn, to improve the profession, and to model professional ethics and personal integrity. The certified school counselor must:

(1) use reflection, self-assessment, and interactions with colleagues to promote personal professional development;

(2) use counseling-related research techniques and practices as well as technology and other resources to facilitate continued professional growth;

(3) strive [~~strives~~] toward the highest level of professionalism by adhering to and modeling professional, ethical, and legal standards;

(4) apply [~~applies~~] research-based practice to improve the school guidance and counseling program; and

(5) continue [~~continues~~] professional development to improve the school guidance and counseling program.

*§239.20. Requirements for the Issuance of the Standard School Counselor Certificate.*

To be eligible to receive the standard School Counselor Certificate, a candidate [~~school counselor certificate under this subchapter; the individual~~] must:

(1) successfully complete a school counselor preparation program that meets the requirements of §239.10 of this title (relating to Preparation Program Requirements) and §239.15 of this title (relating to Standards Required for the School Counselor Certificate) [~~of this subchapter~~];

(2) successfully complete the examination based on the standards identified in §239.15 of this title; [~~assessments required under this title; and~~]

(3) hold, at a minimum, a master's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board; and

(4) have two creditable [~~school~~] years of [~~classroom~~] teaching experience as a classroom teacher, as defined in Chapter 153, Subchapter CC, of this title (relating to Commissioner's Rules on Creditable Years of Service) and the Texas Education Code, §5.001(2) [~~in a public or accredited private school~~].

*§239.25. Requirements to Renew the Standard School Counselor Certificate.*

(a) An [~~Each~~] individual issued a standard counselor certificate under this title from September 1, 1999, to August 31, 2000, is subject to Chapter 232, Subchapter B, [~~R~~] of this title (relating to Certificate Renewal and Continuing Professional Education Requirements), except that only 150 clock-hours [~~hours~~] of continuing professional education must be completed during the first five-year renewal period. During subsequent renewal periods, the holder of such an active standard counselor certificate must satisfy the most current requirements for renewal.

(b) An ~~[Each]~~ individual issued the ~~[a]~~ standard School Counselor Certificate ~~[school counselor certificate]~~ on or after September 1, 2000, is subject to Chapter 232, Subchapter ~~B~~, ~~[R]~~ of this title ~~[(relating to Certificate Renewal and Continuing Professional Education Requirements)]~~.

(c) An individual who holds a valid Texas counselor certificate issued prior to September 1, 1999, may voluntarily comply with the requirements of this section under procedures ~~implemented~~ ~~[adopted]~~ by the Texas Education Agency staff ~~[executive director]~~ under §232.810 of this title (relating to Voluntary Renewal of Current Texas Educators).

*§239.30. Transition and Implementation Dates.*

(a) Section 239.20 of this title ~~[subchapter]~~ (relating to Requirements for the Issuance of the Standard School Counselor Certificate)~~[s]~~ shall be implemented September 1, 2002, and shall supersede all conflicting provisions in this title on September 1, 2003. All other sections of this subchapter shall take effect pursuant to the Texas Government Code, §2001.036~~[, relating to Effective Date of Rules]~~.

~~[(b) The following provisions of Chapter 230, Subchapter J of this title (relating to Certification Requirements for Educators Other Than Classroom Teachers and Educational Aides), shall expire on September 1, 2003:]~~

~~[(1) §230.307(1)-(4) of this title (relating to Counselor Preparation and Certification Requirements);]~~

~~[(2) §230.315 of this title (relating to Special Education Counselor); and]~~

~~[(3) §230.319 of this title (relating to Certification Standards for Vocational Education Supportive Professional Personnel).]~~

~~(b) [(c)]~~ Not later than September 1, 2003, the following provisions ~~[of this title]~~ shall no longer apply to the School Counselor Certificate ~~[school counselor certificate]~~:

~~[(1) Chapter 230, Subchapter O, §230.462(b)(2) of this title (relating to Requirements for Texas Certificates Based on Certification from Other States or Territories of the United States) as it existed on May 5, 2000;]~~

~~(1) [(2)]~~ Section 245.5(a)(2) ~~[Chapter 245, §245.5(a)(2)]~~ of this title (relating to Requirements for Issuance of a Texas Certificate ~~[Certificates]~~ Based on Certification from Another Country)~~2~~, as it existed on May 5, 2000; and

~~(2) [(3)]~~ the "teaching practicum" requirement in ~~[of Chapter 245;]~~ §245.10(a)(2)(B) of this title (relating to Application Procedures~~2~~ ~~[(for Texas certificates based on certification from another country)]~~ ) as it existed on May 5, 2000.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 24, 2009.

TRD-200903718

Karen Loonam

Deputy Associate Commissioner, Educator Certification and Standards,  
Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: October 4, 2009

For further information, please call: (512) 475-1497



## SUBCHAPTER B. SCHOOL LIBRARIAN CERTIFICATE

### 19 TAC §§239.40, 239.45, 239.50, 239.55, 239.60, 239.65, 239.70

The amendments are proposed under the Texas Education Code (TEC), §21.040(4), which states that the SBEC shall for each class of educator certificate, appoint an advisory committee composed of members of that class to recommend standards for that class to the board; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.044, which authorizes the SBEC to propose rules establishing the training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program and specify the minimum academic qualifications required for a certificate; §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC; and §21.054, which requires the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements.

The proposed amendments implement the TEC, §§21.040(4), 21.041(b)(2) - (4), 21.044, 21.048(a), and 21.054.

*§239.40. General Provisions.*

(a) Because the school librarian plays a critical role in campus effectiveness and student achievement, the rules adopted by the State Board for Educator Certification ~~[adopts the rules]~~ in this subchapter ~~[to]~~ ensure that each candidate for the School Librarian Certificate ~~[school librarian certificate]~~ is of the highest caliber and possesses the knowledge and skills necessary to improve the performance of the diverse student population of this state.

(b) An ~~[Each]~~ individual serving as a school librarian is expected to actively participate in professional development activities to continually update his or her knowledge and skills. Currency in best practices and research as related to both campus leadership and student learning is essential.

(c) The holder of the School Librarian Certificate ~~[a school librarian certificate]~~ issued under the provisions of this subchapter ~~[chapter]~~ may serve as a librarian in Prekindergarten-Grade 12 ~~[a Texas public elementary, middle or secondary school]~~.

*§239.45. Minimum Requirements for Admission to a School Librarian Preparation Program.*

(a) Prior to admission to an educator ~~[a]~~ preparation program leading to the School Librarian Certificate ~~[school librarian certificate]~~, an individual must:

(1) hold a baccalaureate degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board ~~[learning]~~; and

(2) meet the requirements for admission to an educator preparation program under Chapter 227 of this title (relating to Provisions for Educator Preparation Candidates ~~[Students]~~ ).

(b) An educator preparation program [Preparation programs] may adopt requirements for admission in addition to those required under subsection (a) of this section.

*§239.50. Preparation Program Requirements.*

(a) Structured, field-based training must be focused on actual experiences with each of the standards identified in §239.55 of this title [subchapter] (relating to Standards Required for the School Librarian Certificate) to include actual library experiences with diverse types of students, grade levels, and campuses.

(b) An educator [Each] preparation program must develop and implement specific criteria and procedures that allow a candidate [admitted individuals] to substitute related experience and/or professional training directly related to the standards identified in §239.55 of this title [subchapter] for part of the preparation coursework or other program requirements.

*§239.55. Standards Required for the School Librarian Certificate.*

(a) School Librarian Certificate Standards. The knowledge and skills identified in this section must be used by an educator preparation program [librarian preparation programs] in the development of curricula and coursework and [will be used] by the State Board for Educator Certification as the basis for developing the examination [assessments] required to obtain the School Librarian Certificate [appropriate school librarian certificates]. The [These] standards [must] also serve as the foundation for the professional growth plan and continuing professional education activities required by §239.65 of this title [subchapter] (relating to Requirements to Renew the Standard School Librarian Certificate).

(b) Standard I. Learner-Centered Teaching and Learning: The certified school librarian is an educational leader who promotes the integration of curriculum, resources, and teaching strategies to ensure the success of all students as the effective creators and users of ideas and information, enabling them to become lifelong learners. Accordingly, the certified school librarian must be able to do the following activities with understanding and valuation of their importance:

(1) participate as an educational leader, an equal partner, and a change agent in the curriculum development process at both the school campus and school district levels;

(2) participate in curriculum design and integrated planning of a shared school campus vision that focuses on reading, teaching, and learning;

(3) model and promote collaborative planning, cooperative teaching, and direct instruction as determined by learners' needs and state curriculum standards;

(4) direct and encourage students in the ethical use of resources to locate, gather, select, synthesize, and evaluate relevant information;

(5) work collaboratively with faculty to provide students with opportunities to assume responsibility for planning and engaging in independent learning;

(6) adapt teaching strategies to accommodate the diverse learning needs of the student population;

(7) provide and promote ongoing staff development for the learning community, particularly in the areas of integration of information technology, information literacy, and literature appreciation;

(8) provide and promote ongoing learning opportunities for students, particularly in the areas of integration of information technology and information literacy;

(9) direct and encourage students to read a variety of fiction and nonfiction resources for personal and informational needs;

(10) understand and evaluate national, state, and local reading initiatives;

(11) create a learning environment in which the diversity of groups and the uniqueness of individuals are recognized and appreciated; and

(12) provide instructional access to library resources and facilities through open, flexible scheduling for classes, small groups, and individuals.

(c) Standard II. Learner-Centered Library Program Leadership and Management: The certified school librarian is an educational leader who promotes the success of all students by acquiring, organizing, and managing information for use in a creative and exemplary library program. Accordingly, the certified school librarian is a leader and manager who must be able to do the following activities with understanding and valuation of their importance:

(1) advocate for the development of an exemplary library media program that encourages a vision of excellence for all learners;

(2) synthesize information from a variety of sources for effective decision making to develop and maintain an exemplary library program;

(3) design policies and procedures that comply with local, state, and federal laws and policies while supporting sound decisions relating to school and library instruction and programs;

(4) establish partnerships within the learning community to support school district and school campus goals through exemplary library programs;

(5) demonstrate effective leadership strategies while working within school campus and school district administrative structures to promote achievement of library program goals;

(6) employ effective interpersonal communication skills;

(7) implement effective strategies and techniques to systematically perform library management operations such as [?] budgeting; purchasing; scheduling; managing and maintaining facilities and resources; supervising adults and children; reporting; grant writing; and overseeing circulation and inventory;

(8) collaborate with faculty to ensure that the process of evaluating and selecting library resources provides curriculum-related and leisure reading materials;

(9) design and implement acceptable use policies for current and emerging technologies;

(10) use effective planning, time management, and organization of work to maximize attainment of district and campus goals through exemplary library programs; and

(11) monitor, assess, and employ existing and emerging technologies for management applications.

(d) Standard III. Learner-Centered Technology and Information Access: The certified school librarian is an educational leader who promotes the success of all students by facilitating the use and integration of technology, telecommunications, and information systems to enrich the curriculum and enhance learning. Accordingly, the certified school librarian must be able to do the following activities with understanding and valuation of their importance:

(1) provide a balanced, carefully selected, and systematically organized collection of library resources that are sufficient to meet

students' needs and are continuously monitored to be current and relevant in each subject area;

(2) model and promote the highest standard of conduct, ethics, and integrity in the use of the Internet and other print and electronic resources;

(3) employ existing and emerging technologies to access, evaluate, and disseminate information for possible application to instructional programs;

(4) promote interlibrary loan policy to facilitate information access beyond the campus;

(5) model information problem-solving processes in providing instruction about reference and research techniques; and

(6) participate in state and national technology initiatives.

(e) **Standard IV. Learner-Centered Library Environment:** The school librarian is an educational leader who promotes the success of all students by establishing a climate in the library that enables and encourages all members of the learning community to explore and meet their information needs. Accordingly, the certified school librarian must be able to do the following activities with understanding and valuation of their importance:

(1) understand the principles of exemplary library design as defined by state and federal guidelines for a simultaneous-use facility for individuals, small groups, and classes;

(2) develop and maintain a flexible, functional, and barrier-free library facility that conforms to national and state library standards;

(3) provide a safe, secure environment that is age appropriate [~~age-appropriate~~];

(4) maximize available space to permit displays of student-, faculty- and community-produced materials and collections; and

(5) promote access to resources and information during and beyond the instructional day and school year.

(f) **Standard V. Learner-Centered Connections to the Community:** The school librarian is an educational leader who promotes the success of all students by collaborating with families and community members, responding to diverse community interests and needs, and fostering the use of community resources. Accordingly, the certified school librarian must be able to do the following activities with understanding and valuation of their importance:

(1) promote awareness of and responsiveness to learning differences and other types of diversity in the learning community;

(2) exhibit effective communication through oral, written, electronic, and nonverbal expression;

(3) implement strategies for effective internal and external communications;

(4) establish partnerships with businesses, learning institutions, global communities, and other libraries and entities to strengthen programs and support school campus goals;

(5) develop library programs that offer families opportunities to participate in school activities and in their children's education;

(6) advocate access to resources and information during and beyond the instructional day and school year; and

(7) develop and implement a comprehensive program of community relations that uses strategies to effectively involve and inform multiple constituencies, including the news media.

(g) **Standard VI. Learner-Centered Information Science and Librarianship:** As an educational leader, the certified school librarian uses his or her unique knowledge base, drawing from both education and library science, to promote the success of all students and to provide experiences that help learners locate, evaluate, and use information to solve problems while becoming lifelong readers and learners. Accordingly, the certified school librarian must be able to do the following activities with understanding and valuation of their importance:

(1) understand the role of all types of libraries and information agencies in an integrated learning environment;

(2) understand the role of the school library media program as a central element in the intellectual life of the school;

(3) know theories, principles, and skills related to the selection, acquisition, organization, storage, retrieval, use, and evaluation of information;

(4) implement standard library procedures for classifying, cataloging, and processing various resources that facilitate computerization and resource sharing;

(5) evaluate and select existing and emergent technologies in support of the library program;

(6) communicate effectively to patrons to determine their information needs;

(7) demonstrate an understanding of bibliographic and retrieval techniques needed to organize and use information sources;

(8) use knowledge of literature and information resources to help students select materials;

(9) understand and model principles of intellectual freedom, information access, privacy, and proprietary rights;

(10) design and use statistical reports to support an exemplary library program;

(11) use varied reading materials, programs, and motivational strategies to guide the development of independent readers;

(12) engage in continual self-evaluation and self-directed learning for professional growth;

(13) maintain an active interest in and contribute to appropriate local, state, regional, and national professional associations and publications;

(14) demonstrate ethical behavior in all professional contexts; and

(15) work collaboratively with other information professionals in support of the library program and the profession.

*§239.60. Requirements for the Issuance of the Standard School Librarian Certificate.*

To be eligible to receive the standard School Librarian Certificate, a candidate [~~school librarian certificate under this subchapter~~; the individual] must:

(1) successfully complete a school librarian preparation program that meets the requirements of §239.50 of this title (relating to Preparation Program Requirements) and §239.55 of this title (relating to Standards Required for the School Librarian Certificate) [~~of this subchapter~~];

(2) successfully complete the examination based on the standards identified in §239.55 of this title; [~~assessments required under this title~~; and]

(3) hold, at a minimum, a master's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board; and[;]

(4) have two creditable [school] years of [classroom] teaching experience as a classroom teacher, as defined in Chapter 153, Subchapter CC, of this title (relating to Commissioner's Rules on Creditable Years of Service) and the Texas Education Code, §5.001(2) [from a public or accredited private school].

§239.65. *Requirements to Renew the Standard School Librarian Certificate.*

(a) An [Each] individual issued a standard librarian certificate from September 1, 1999, to August 31, 2000, is subject to Chapter 232, Subchapter B, [R] of this title (relating to Certificate Renewal and Continuing Professional Education Requirements [; including those for holders of a standard learning resources specialist certificate] ), except that only 150 clock-hours [hours] of continuing professional education must be completed during the first five-year renewal period. During subsequent renewal periods, the holder of such an active standard librarian certificate must satisfy the most current requirements for renewal.

(b) An [Each] individual issued the [a] standard School Librarian Certificate [school librarian certificate] on or after September 1, 2000, is subject to Chapter 232, Subchapter B, [R] of this title [(relating to Certificate Renewal and Continuing Professional Education Requirements)].

(c) An individual who holds a valid Texas school librarian certificate or endorsement issued prior to September 1, 1999, may voluntarily comply with the requirements of this section under procedures implemented [adopted] by the Texas Education Agency staff [executive director] under §232.810 of this title (relating to Voluntary Renewal of Current Texas Educators).

§239.70. *Transition and Implementation Dates.*

(a) Section 239.60 of this title (relating to Requirements for the Issuance of the Standard School Librarian Certificate) shall be implemented on September 1, 2002, and shall supersede all conflicting provisions in this title on September 1, 2003. All other sections of this subchapter shall take effect pursuant to the Texas Government Code, §2001.036[; relating to Effective Date of Rules].

[(b) The following provisions of this title shall expire on September 1, 2003:]

[(1) Chapter 230, Subchapter G, §230.199(d)(2) of this title (relating to Endorsements); and]

[(2) Chapter 230, Subchapter J, §230.311(a)-(d) of this title (relating to Learning Resources Specialist).]

(b) [(e)] Not later than September 1, 2003, the following provisions [of this title] shall no longer apply to the School Librarian Certificate [school librarian certificate]:

[(1) Chapter 230, Subchapter O, §230.462(b)(2) of this title (relating to Requirements for Texas Certificates Based on Certification from Other States or Territories of the United States) as it existed on May 5, 2000;]

(1) [(2)] Section 245.5(a)(2) [Chapter 245, §245.5(a)(2)] of this title (relating to Requirements for Issuance of a Texas Certificate [Certificates] Based on Certification from Another Country) , as it existed on May 5, 2000; and

(2) [(3)] the "teaching practicum" requirement in [of Chapter 245,] §245.10(a)(2)(B) of this title (relating to Application Proce-

dures [for Texas certificates based on certification from another country] ) as it existed on May 5, 2000.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 24, 2009.

TRD-200903719

Karen Loonam

Deputy Associate Commissioner, Educator Certification and Standards, Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: October 4, 2009

For further information, please call: (512) 475-1497



## SUBCHAPTER C. EDUCATIONAL DIAGNOSTICIAN CERTIFICATE

### 19 TAC §§239.80 - 239.86

The amendments are proposed under the Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; and §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate.

The proposed amendments implement the TEC, §21.031(a) and §21.041(a) and (b)(1) - (4).

§239.80. *General Provisions.*

(a) Because the educational diagnostician plays a critical role in campus effectiveness and student achievement , the rules adopted by the State Board for Educator Certification [adopts the rules] in this subchapter [to] ensure that each candidate for the Educational Diagnostician Certificate [educational diagnostician certificate] is of the highest caliber and possesses the knowledge and skills necessary to improve the performance of the diverse student population of this state.

(b) An [Each] individual serving as an [a] educational diagnostician is expected to actively participate in professional development activities to continually update his or her knowledge and skills. Currency in best practices and research as related to both campus leadership and student learning is essential.

(c) The holder of the Educational Diagnostician Certificate [an educational diagnostician certificate] issued under the provisions of this subchapter [chapter] may serve as an educational diagnostician, including providing educational[;] assessment and evaluation, as required by the Individuals with Disabilities Education Act (IDEA) or other applicable law, for students from Early Childhood-Grade 12 [in early childhood programs through grade 12].

*§239.81. Minimum Requirements for Admission to an Educational Diagnostician Preparation Program.*

(a) Prior to admission to an educator ~~[a]~~ preparation program leading to the Educational Diagnostician Certificate ~~[educational diagnostician certificate]~~, an individual must:

(1) hold a baccalaureate degree from an accredited institution of higher education ~~that at the time was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board;~~ ~~[and]~~

(2) hold a valid classroom teaching certificate; and

(3) ~~[(2)]~~ meet the requirements for admission to an educator preparation program under Chapter 227 of this title (relating to Provisions for Educator Preparation ~~Candidates~~ ~~[Students]~~ ).

(b) ~~An educator preparation program~~ ~~[Preparation programs]~~ may adopt requirements for admission in addition to those required in subsection (a) of this section.

*§239.82. Preparation Program Requirements.*

(a) Structured, field-based training must be focused on actual experiences with each of the standards identified in §239.83 of this title ~~[subchapter]~~ (relating to Standards Required for the Educational Diagnostician Certificate) to include experiences with ~~[at]~~ diverse types of students, grade levels, and campuses.

(b) ~~An educator~~ ~~[Each]~~ preparation program must develop and implement specific criteria and procedures that allow a candidate ~~[admitted individuals]~~ to substitute related professional educational diagnostician training and/or experience directly related to the standards identified in §239.83 of this title ~~[subchapter]~~ for part of the preparation coursework or other program requirements.

*§239.83. Standards Required for the Educational Diagnostician Certificate.*

(a) Educational Diagnostician Certificate Standards. The knowledge and skills identified in this section must be used by an educator preparation program ~~[educational diagnostician preparation programs]~~ in the development of curricula and coursework and ~~[will be used]~~ by the State Board for Educator Certification as the basis for developing the examination ~~[assessments]~~ required to obtain the standard ~~[Standard]~~ Educational Diagnostician Certificate. The ~~[These]~~ standards ~~[must]~~ also serve as the foundation for the professional growth plan~~[-]~~ and continuing professional education activities required by §239.85 of this title ~~[subchapter]~~ (relating to Requirements to Renew the Standard Educational Diagnostician Certificate).

(b) Standard I. The educational diagnostician understands and applies knowledge of the purpose, philosophy, and legal foundations of evaluation and special education.

(1) The beginning educational diagnostician knows and understands:

(A) state and federal regulations relevant to the role of the educational diagnostician;

(B) laws and legal issues related to the assessment and evaluation of individuals with educational needs;

(C) models, theories, and philosophies that provide the basis for special education evaluations;

(D) issues, assurances, and due process rights related to evaluation, eligibility, and placement within a continuum of services; and

(E) rights and responsibilities of parents/guardians, schools, students, and teachers and other professionals in relation to individual learning needs.

(2) The beginning educational diagnostician is able to:

(A) articulate the purpose of evaluation procedures and their relationship to educational programming; and

(B) conduct evaluations and other professional activities consistent with the requirements of laws, rules and regulations, and local district policies and procedures.

(c) Standard II. The educational diagnostician understands and applies knowledge of ethical and professional practices, roles, and responsibilities.

(1) The beginning educational diagnostician knows and understands:

(A) ethical practices regarding procedural safeguards (e.g., confidentiality issues, informed consent) for individuals with disabilities;

(B) ethical practices related to assessment and evaluation;

(C) qualifications necessary to administer and interpret various instruments and procedures; and

(D) organizations and publications relevant to the field of educational diagnosis.

(2) The beginning educational diagnostician is able to:

(A) demonstrate commitment to developing quality educational opportunities appropriate for individuals with disabilities;

(B) demonstrate positive regard for the culture, gender, and personal beliefs of individual students;

(C) promote and maintain a high level of competence and integrity in the practice of the profession;

(D) exercise objective professional judgment in the practice of the profession;

(E) engage in professional activities that benefit individuals with exceptional learning needs, their families, and/or colleagues;

(F) comply with local, state, and federal monitoring and evaluation requirements;

(G) use copyrighted educational materials in an ethical manner; and

(H) participate in the activities of professional organizations in the field of educational diagnosis.

(d) Standard III. The educational diagnostician develops collaborative relationships with families, educators, the school, the community, outside agencies, and related service personnel.

(1) The beginning educational diagnostician knows and understands:

(A) strategies for promoting effective communication and collaboration with others, including parents/guardians and school and community personnel, in a culturally responsive manner;

(B) concerns of parents/guardians of individuals with exceptional learning needs and appropriate strategies to help parents/guardians address these concerns;

(C) strategies for developing educational programs for individuals through collaboration with team members;

(D) roles of individuals with disabilities, parents/caregivers, teachers, and other school and community personnel in planning educational programs for individuals; and

(E) family systems and the role of families in supporting student development and educational progress.

(2) The beginning educational diagnostician is able to:

(A) use collaborative strategies in working with individuals with disabilities, parents/caregivers, and school and community personnel in various learning environments;

(B) communicate and consult effectively with individuals, parents/guardians, teachers, and other school and community personnel;

(C) foster respectful and beneficial relationships between families and education professionals;

(D) encourage and assist individuals with disabilities and their families to become active participants in the educational team;

(E) plan and conduct collaborative conferences with individuals who have exceptional learning needs and their families or primary caregivers;

(F) collaborate with classroom teachers and other school and community personnel in including individuals with exceptional learning needs in various learning environments;

(G) communicate with classroom teachers, administrators, and other school personnel about characteristics and needs of individuals with disabilities;

(H) use appropriate communication skills to report and interpret assessment and evaluation results;

(I) provide assistance to others who collect informal and observational data;

(J) effectively communicate to parents/guardians and professionals the purposes, methods, findings, and implications of assessments; and

(K) keep accurate and detailed records of assessments, evaluations, and related proceedings (e.g., admission, review, and dismissal/individualized education program (ARD/IEP) [ARD/IEP] meetings, parent/guardian communications and notifications).

(e) Standard IV. The educational diagnostician understands and applies knowledge of student assessment and evaluation, program planning, and instructional decision making.

(1) The beginning educational diagnostician knows and understands:

(A) the characteristics, needs, and rights of individual students in relation to assessment and evaluation for placement within a continuum of services;

(B) the relationship between evaluation and placement decisions; and

(C) the role of team members, including the student when appropriate, in planning an individualized program.

(2) The beginning educational diagnostician is able to:

(A) use assessment and evaluation information to plan individualized programs and make instructional decisions that result in

appropriate services for individuals with disabilities, including those from culturally and/or linguistically diverse backgrounds;

(B) interpret and use assessment and evaluation data for targeted instruction and ongoing review; and

(C) assist in identifying realistic expectations for educationally relevant behavior (e.g., vocational, functional, academic, social) in various settings.

(f) Standard V. The educational diagnostician knows eligibility criteria and procedures for identifying students with disabilities and determining the presence of an educational need.

(1) The beginning educational diagnostician knows and understands:

(A) characteristics of individuals with disabilities, including those with different levels of severity and with multiple disabilities;

(B) educational implications of various disabilities; and

(C) the variation in ability exhibited by individuals with particular types of disabilities.

(2) The beginning educational diagnostician is able to:

(A) access information on the cognitive, communicative, physical, social, and emotional characteristics of individuals with disabilities;

(B) gather background information regarding the academic, medical, and family history of individuals with disabilities; and

(C) use various types of assessment and evaluation procedures appropriately to identify students with disabilities and to determine the presence of an educational need.

(g) Standard VI. The educational diagnostician selects, administers, and interprets appropriate formal and informal assessments and evaluations.

(1) The beginning educational diagnostician knows and understands:

(A) basic terminology used in assessment and evaluation;

(B) standards for test reliability;

(C) standards for test validity;

(D) procedures used in standardizing assessment instruments;

(E) possible sources of test error;

(F) the meaning and use of basic statistical concepts used in assessment and evaluation (e.g., standard error of measurement, mean, standard deviation);

(G) uses and limitations of each type of assessment instrument;

(H) uses and limitations of various types of assessment data;

(I) procedures for screening, prereferral, referral, and eligibility;

(J) the appropriate application and interpretation of derived scores (e.g., standard scores, percentile ranks, age and grade equivalents, stanines);



(K) the necessity of monitoring the progress of individuals with disabilities;

(L) methods of academic and nonacademic (e.g., vocational, developmental, assistive technology) assessment and evaluation; and

(M) methods of motor skills assessment.

(2) The beginning educational diagnostician is able to:

(A) collaborate with families and other professionals in the assessment and evaluation of individuals with disabilities;

(B) select and use assessment and evaluation materials based on technical quality and individual student needs;

(C) score assessment and evaluation instruments accurately;

(D) create and maintain assessment reports;

(E) select or modify assessment procedures to ensure nonbiased results;

(F) use a variety of observation techniques;

(G) assess and interpret information using formal/informal instruments and procedures in the areas of cognitive/adaptive behavior and academic skills;

(H) determine the need for further assessment in the areas of language skills, physical skills, social/emotional behavior, and assistive technology;

(I) determine a student's needs in various curricular areas, and make intervention, instructional, and transition planning recommendations based on assessment and evaluation results;

(J) make recommendations based on assessment and evaluation results;

(K) prepare assessment reports; and

(L) use performance data and information from teachers, other professionals, individuals with disabilities, and parents/guardians to make or suggest appropriate modifications and/or accommodations within learning environments.

(h) Standard VII. The educational diagnostician understands and applies knowledge of ethnic, linguistic, cultural, and socioeconomic diversity and the significance of student diversity for evaluation, planning, and instruction.

(1) The beginning educational diagnostician knows and understands:

(A) issues related to definition and identification procedures for individuals with disabilities, including individuals from culturally and/or linguistically diverse backgrounds;

(B) characteristics and effects of the cultural and environmental backgrounds of students and their families, including cultural and linguistic diversity, socioeconomic diversity, abuse/neglect, and substance abuse;

(C) issues related to the representation in special education of populations that are culturally and linguistically diverse;

(D) ways in which diversity may affect evaluation; and

(E) strategies that are responsive to the diverse backgrounds and particular disabilities of individuals in relation to evaluation, programming, and placement.

(2) The beginning educational diagnostician is able to:

(A) apply knowledge of cultural and linguistic factors to make appropriate evaluation decisions and instructional recommendations for individuals with disabilities; and

(B) recognize how student diversity and particular disabilities may affect evaluation, programming, and placement, and use procedures that ensure nonbiased results.

(i) Standard VIII. The educational diagnostician knows and demonstrates skills necessary for scheduling, time management, and organization.

(1) The beginning educational diagnostician knows and understands:

(A) time-management [~~time management~~] strategies and systems appropriate for various educational situations and environments;

(B) legal and regulatory timelines, schedules, deadlines, and reporting requirements; and

(C) methods for organizing, maintaining, accessing, and storing records and information.

(2) The beginning educational diagnostician is able to:

(A) select, adapt, or design forms to facilitate planning, scheduling, and time management;

(B) maintain eligibility folders; and

(C) use technology appropriately to organize information and schedules.

(j) Standard IX. The educational diagnostician addresses students' behavioral and social interaction skills through appropriate assessment, evaluation, planning, and instructional strategies.

(1) The beginning educational diagnostician knows and understands:

(A) requirements and procedures for functional behavioral assessment, manifestation determination review, and behavioral intervention plans;

(B) applicable laws, rules and regulations, and procedural safeguards regarding the planning and implementation of behavioral intervention plans for individuals with disabilities;

(C) ethical considerations inherent in behavior interventions;

(D) teacher attitudes and behaviors that influence the behavior of individuals with disabilities;

(E) social skills needed for school, home, community, and work environments;

(F) strategies for crisis prevention, intervention, and management;

(G) strategies for preparing individuals to live productively in a multiclass, multiethnic, multicultural, and multinational world; and

(H) key concepts in behavior intervention (e.g., least intrusive accommodations/ modifications within the learning environment, reasonable expectations for social behavior, social skills curricula, cognitive behavioral strategies).

(2) The beginning educational diagnostician is able to:

(A) conduct functional behavioral assessments;

(B) assist in the development of behavioral intervention plans; and

(C) participate in manifestation determination review.

(k) Standard X. The educational diagnostician knows and understands appropriate curricula and instructional strategies for individuals with disabilities.

(1) The beginning educational diagnostician knows and understands:

(A) instructional strategies, technology tools and applications, and curriculum materials for students with disabilities within the continuum of services;

(B) varied learning styles of individuals with disabilities;

(C) curricula for the development of motor, cognitive, academic, social, language, affective, career, and functional skills for individuals with disabilities;

(D) techniques for modifying instructional methods and materials for individuals with disabilities;

(E) functional skills instruction relevant to transitioning across environments (e.g., preschool to elementary school, school to work);

(F) supports needed for integration into various program placements; and

(G) individualized assessment strategies for instruction (e.g., authentic assessment, contextual assessment, curriculum-based assessment).

(2) The beginning educational diagnostician is able to:

(A) interpret and use assessment and evaluation data for instructional planning; and

(B) use assessment and evaluation, planning, and management procedures that are appropriate in relation to student needs and the instructional environment.

*§239.84. Requirements for the Issuance of the Standard Educational Diagnostician Certificate.*

To be eligible to receive the standard [~~Standard~~] Educational Diagnostician Certificate, a candidate [~~under this subchapter, the individual~~] must:

(1) successfully complete an [~~a~~] educational diagnostician preparation program that meets the requirements of §239.82 of this title (relating to Preparation Program Requirements) and §239.83 of this title (relating to Standards Required for the Educational Diagnostician Certificate) [~~of this subchapter~~];

(2) successfully complete the examination based on the standards identified in §239.83 of [~~assessments required under~~] this title;

(3) hold, at a minimum, a master's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board; [~~and~~]

(4) hold a valid classroom teaching certificate; and

(5) [~~(4)~~] have two creditable years of [~~school years of classroom~~] teaching experience as a classroom teacher, as defined in Chapter 153, Subchapter CC, of this title (relating to Commissioner's Rules on Creditable Years of Service) and the Texas Education Code, §5.001(2) [in a public or accredited private school].

*§239.85. Requirements to Renew the Standard Educational Diagnostician Certificate.*

(a) An [~~Each~~] individual issued the standard [~~a Standard~~] Educational Diagnostician Certificate under this title is subject to Chapter 232, Subchapter B, [~~R~~] of this title (relating to Certificate Renewal and Continuing Professional Education Requirements).

(b) An individual who holds a valid Texas educational diagnostician certificate issued prior to September 1, 1999, may voluntarily comply with the requirements of this section under procedures implemented [~~adopted~~] by the Texas Education Agency staff [~~executive director~~] under §232.810 of this title (relating to Voluntary Renewal of Current Texas Educators).

*§239.86. Transition and Implementation Dates.*

[~~(a)~~] Section 239.84 of this title (relating to Requirements for the Issuance of the Standard Educational Diagnostician Certificate) [~~]~~ shall be implemented and shall supersede all conflicting provisions in this title on September 1, 2003. All other sections of this subchapter shall take effect pursuant to the Texas Government Code, §2001.036 [~~relating to Effective Date of Rules~~].

[~~(b)~~] Section 239.316 of this title (relating to Educational Diagnostician (Special Education)) shall expire on September 1, 2003.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 24, 2009.

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Karen Loonam

Deputy Associate Commissioner, Educator Certification and Standards,  
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State Board for Educator Certification

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For further information, please call: (512) 475-1497



## SUBCHAPTER D. READING SPECIALIST CERTIFICATE

### 19 TAC §§239.90 - 239.95

The amendments are proposed under the Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; and §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate.

The proposed amendments implement the TEC, §21.031(a) and §21.041(b)(1) - (4).

*§239.90. General Provisions.*

(a) Because the reading specialist plays a critical role in campus effectiveness and student achievement, the rules adopted by the

State Board for Educator Certification ~~[adopts the rules]~~ in this subchapter ~~[to]~~ ensure that each candidate for the Reading Specialist Certificate ~~[reading specialist certificate]~~ is of the highest caliber and possesses the knowledge and skills necessary to improve the performance of the diverse student population of this state.

(b) ~~An~~ [Each] individual serving as a reading specialist is expected to actively participate in professional development activities to continually update his or her knowledge and skills. Currency in best practices and research as related to both campus leadership and student learning is essential.

(c) The holder of the Reading Specialist Certificate ~~[a reading specialist certificate]~~ issued under the provisions of this subchapter ~~[chapter]~~ may teach reading to students in Prekindergarten-Grade 12 ~~[early childhood programs through grade 12]~~.

*§239.91. Minimum Requirements for Admission to a Reading Specialist Preparation Program.*

(a) Prior to admission to an educator ~~[a]~~ preparation program leading to the standard ~~[Standard]~~ Reading Specialist Certificate, an individual must:

(1) hold a baccalaureate degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board; and

(2) meet the requirements for admission to an educator preparation program under Chapter 227 of this title (relating to Provisions for Educator Preparation Candidates ~~[Students]~~).

(b) ~~An~~ an educator preparation program ~~[Preparation programs]~~ may adopt requirements for admission in addition to those required in subsection (a) of this section.

*§239.92. Preparation Program Requirements.*

(a) Structured, field-based training must be focused on actual experiences with each of the standards identified in the State Board for Educator Certification-approved reading specialist standards ~~[Standards for Reading Specialist]~~ to include experiences with ~~[at]~~ diverse types of students, grade levels, and campuses.

(b) ~~An~~ Each educator preparation program must develop and implement specific criteria and procedures that allow a candidate ~~[admitted individuals]~~ to substitute related professional reading specialist training and/or ~~[or]~~ experience directly related to the standards identified in subsection (a) of this section for part of the preparation coursework or other program requirements.

*§239.93. Requirements for the Issuance of the Reading Specialist Certificate.*

To be eligible to receive the standard ~~[Standard]~~ Reading Specialist Certificate, a candidate ~~[under this subchapter, the individual]~~ must:

(1) successfully complete a reading specialist preparation program that meets the requirements of §239.92 of this title (relating to Preparation Program Requirements) ~~[of this subchapter]~~;

(2) successfully complete the examination based on the standards identified in §239.92 of this title ~~[complete the assessments required under this title]~~;

(3) hold, at a minimum, a master's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board; and

(4) have two creditable years ~~[school years of classroom]~~ teaching experience as a classroom teacher, as defined in Chapter 153,

Subchapter CC, of this title (relating to Commissioner's Rules on Creditable Years of Service) and the Texas Education Code, §5.001(2) ~~[in a public or accredited private school]~~.

*§239.94. Requirements to Renew the Standard Reading Specialist Certificate.*

(a) ~~An~~ Each individual issued the standard ~~[a Standard]~~ Reading Specialist Certificate under this title is subject to Chapter 232, Subchapter B, ~~[R]~~ of this title (relating to Certificate Renewal and Continuing Professional Education Requirements).

(b) An individual who holds a valid Texas reading specialist certificate issued prior to September 1, 1999, may voluntarily comply with the requirements of this section under procedures implemented ~~[adopted]~~ by the Texas Education Agency staff ~~[executive director]~~ under §232.810 of this title (relating to Voluntary Renewal of Current Texas Educators).

*§239.95. Transition and Implementation Dates.*

Section 239.93 of this title (relating to Requirements for the Issuance of the ~~[Standard]~~ Reading Specialist Certificate) shall be implemented on September 1, 2003, and shall supersede all conflicting provisions in this title on September 1, 2004. All other sections of this subchapter shall take effect pursuant to the Texas Government Code, §2001.036~~[relating to Effective Date of Rules]~~.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Karen Loonam

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State Board for Educator Certification

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## SUBCHAPTER E. MASTER TEACHER CERTIFICATE

### 19 TAC §§239.100 - 239.104

The amendments are proposed under the Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC; §21.0481, which requires the SBEC to establish a

master reading teacher certificate; §21.0482, which requires the SBEC to establish a master mathematics teacher certificate to teach at the elementary school grade levels, middle school grade levels, and high school grade levels; §21.0483, which requires the SBEC to establish a master technology teacher certificate; and §21.0484, which requires the SBEC to establish a master science teacher certificate.

The proposed amendments implement the TEC, §§21.031(a), 21.041(b)(1) - (4) and (9), 21.048(a), 21.0481, 21.0482, 21.0483, and 21.0484.

*§239.100. General Provisions for Master Teacher Certificates.*

(a) An educator preparation program [entity] must obtain approval from the State Board for Educator Certification (SBEC) [board] under §228.10 [Section 228.10] of this title (relating to Approval Process) [according to board guidelines] before it may offer a program to prepare candidates to be certified master teachers.

(b) SBEC-approved standards [Standards approved by board] shall be the basis for an educator preparation [a] program that prepares candidates [individuals] to be certified as master teachers. An educator preparation program [entity] operating a program shall periodically measure a candidate's [the individual's] progress and needed improvement using benchmarks and structured assessments based on the appropriate master teacher certificate standards.

(c) A field-based practicum required by this subchapter shall be structured to provide a candidate [the individual] relevant experiences in a variety of educational settings with diverse student populations. The practicum experience shall require a candidate [the individual] to demonstrate proficiency in each of the applicable standards.

(d) To take a course through an SBEC-approved educator [approved master teacher] preparation program, a candidate [an individual] must meet the following requirements:

(1) hold a baccalaureate degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board; and

(2) satisfy other requirements established by the educator preparation program to appropriately determine the candidate's [individual's] qualifications for the master teacher certificate sought.

*§239.101. Master Reading Teacher Certification.*

(a) To ensure that there are teachers with special training to work with other teachers and with students in order to improve student reading performance, the State Board for Educator Certification (SBEC) established the Master Reading Teacher Certificate [board shall establish a master reading teacher certificate].

(b) The holder of the Master Reading Teacher Certificate [a master reading teacher certificate] may serve as a reading teacher mentor to other teachers and teach reading to students in Prekindergarten-Grade 12 [pre-kindergarten, kindergarten, and grades 1 - 12].

(c) To be eligible for the Master Reading Teacher Certificate, an individual [a master reading teacher certificate, a person] must:

(1) hold the Reading Specialist Certificate [a reading specialist certificate] issued under Subchapter D of this chapter (relating to Reading Specialist Certificate) and successfully [this title and satisfactorily] complete a course of instruction as prescribed under paragraph (2)(B) of this subsection through an SBEC-approved educator [a] preparation program [approved by the board] and satisfy any other requirement generally applicable to a certificate issued under this title; or

(2) hold a valid teaching certificate issued under this title and:

(A) have at least three creditable years [of] teaching experience as a classroom teacher, as defined in Chapter 153, Subchapter CC, of this title (relating to Commissioner's Rules on Creditable Years of Service) and the Texas Education Code, §5.001(2);

(B) satisfactorily complete a knowledge-based and skills-based course of instruction through an SBEC-approved educator [a] preparation program [approved by the board] on the science of teaching children to read that includes training in:

(i) effective reading instruction techniques, including effective techniques for students whose primary language is a language other than English;

(ii) identification of dyslexia and related reading disorders and effective reading instruction techniques for students with those disorders; and

(iii) effective professional peer mentoring techniques;

(C) satisfactorily complete a field-based practicum prescribed by an SBEC-approved educator preparation program [approved by the board];

(D) perform satisfactorily on the master reading teacher certification examination prescribed by the SBEC [board]; and

(E) satisfy any other requirement generally applicable to a certificate issued under this title.

*§239.102. Master Mathematics Teacher Certification.*

(a) To ensure that there are teachers with special training to work with other teachers and with students in order to improve student mathematics performance, the State Board for Educator Certification (SBEC) established [board shall establish]:

(1) the Master Mathematics Teacher Certificate [a master mathematics teacher certificate] to teach mathematics in Early Childhood-Grade 4 [early childhood programs through grade four];

(2) the Master Mathematics Teacher Certificate [a master mathematics teacher certificate] to teach mathematics in Grades 4-8 [grades four through eight]; and

(3) the Master Mathematics Teacher Certificate [a master mathematics teacher certificate] to teach mathematics in Grades 8-12 [grades eight through twelve].

(b) The SBEC [board] shall issue the appropriate Master Mathematics Teacher Certificate [master mathematics teacher certificate] to an [each] eligible individual [person].

(c) To be eligible for the Master Mathematics Teacher Certificate [a master mathematics teacher certificate], an individual [a person] must:

(1) hold a valid teaching certificate issued under this title;

(2) have at least three creditable years [of] teaching experience as a classroom teacher, as defined in Chapter 153, Subchapter CC, of this title (relating to Commissioner's Rules on Creditable Years of Service) and the Texas Education Code, §5.001(2);

(3) satisfactorily complete a knowledge-based course of instruction through an SBEC-approved educator [a] preparation program [approved by the board] on the science of teaching children mathematics that includes training in mathematics instruction and professional peer mentoring techniques that, through scientific testing, have been proven effective;

(4) satisfactorily complete a field-based practicum prescribed by an SBEC-approved educator [a] preparation program [approved by the board];

(5) perform satisfactorily on the appropriate master mathematics teacher certification examination prescribed by the SBEC [board]; and

(6) satisfy any other requirement generally applicable to certificates issued under this title.

(d) The course of instruction prescribed under subsection (c)(3) of this section shall be developed by the Texas Education Agency staff [board] in consultation with mathematics and science faculty members at institutions of higher education.

#### *§239.103. Master Technology Teacher Certification.*

(a) To ensure that there are teachers with special training to work with other teachers and with students in order to increase the use of technology in each classroom, the State Board for Educator Certification (SBEC) established the Master Technology Teacher Certificate [board shall establish a master technology teacher certificate].

(b) The holder of the Master Technology Teacher Certificate [a master technology teacher certificate] may serve [aet] as a technology training mentor for the amount of time and in the manner established by the school district and by rule adopted by the commissioner of education. The holder of the Master Technology Teacher Certificate [a master technology teacher certificate] is not certified to teach technology courses in the required secondary curriculum as specified in §74.3 of this title (relating to Description of a Required Secondary Curriculum) [49 TAC Chapter 74, Subchapter A, Required Curriculum (§74.3)], unless the individual holds a certificate appropriate for assignment to teach those courses as specified in Chapter 231 [230, Subchapter U], of this title (relating to Assignment of Public School Personnel), Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates), or elsewhere in this title.

(c) To be eligible for the Master Technology Teacher Certificate, an individual [a master technology teacher certificate, a person] must:

(1) hold the Technology Applications Certificate or the Technology Education Certificate [a technology applications or technology education certificate] issued under this title and:

(A) satisfactorily complete the course of instruction as prescribed under paragraph (2)(B) of this subsection through an SBEC-approved educator [a] preparation program [approved by the board];

(B) satisfactorily perform on the examination prescribed under paragraph (2)(D) of this subsection;

(C) satisfactorily complete a field-based practicum prescribed by an SBEC-approved educator [a] preparation program [approved by the board]; and

(D) satisfy any other requirement generally applicable to certificates issued under this title; or

(2) hold a valid teaching certificate issued under this title and:

(A) have at least three creditable years [øf] teaching experience as a classroom teacher, as defined in Chapter 153, Subchapter CC, of this title (relating to Commissioner's Rules on Creditable Years of Service) and the Texas Education Code, §5.001(2);

(B) satisfactorily complete a knowledge-based and skills-based course of instruction on interdisciplinary technology applications and the science of teaching technology through an

SBEC-approved educator [a] preparation program [approved by the board] that includes training in:

(i) effective technology instruction techniques, including applications designed to meet the educational needs of students with disabilities;

(ii) classroom teaching methodology that engages student learning through the integration of technology;

(iii) digital learning competencies, including Internet research, graphics, animation, website mastering, and video technologies;

(iv) curriculum models designed to prepare teachers to facilitate an active student learning environment; and

(v) effective professional peer mentoring techniques;

(C) satisfactorily complete a field-based practicum prescribed by an SBEC-approved educator [a] preparation program [approved by the board];

(D) satisfactorily perform on an examination [developed in cooperation with the Telecommunications Infrastructure Fund Board and] administered at the conclusion of the course of instruction prescribed under subparagraph (B) of this paragraph; and

(E) satisfy any other requirement generally applicable to certificates issued under this title.

(d) The SBEC [board] may provide technology applications training courses under subsection (c)(2)(B) of this section and a field-based practicum under subsection (c)(2)(C) of this section in cooperation with:

(1) regional education service centers; and

(2) other public or private entities, including any state council on technology.

(e) The course of instruction prescribed under subsection (c)(2)(B) of this section shall be developed by the Texas Education Agency staff in consultation with technology faculty members at institutions of higher education.

#### *§239.104. Master Science Teacher Certification.*

(a) To ensure that there are teachers with special training to work with other teachers and with students in order to improve student science performance, the State Board for Educator Certification (SBEC) established [shall establish]:

(1) the Master Science Teacher Certificate [a master science teacher certificate] to teach science in Early Childhood-Grade 4 [early childhood programs through Grade 4];

(2) the Master Science Teacher Certificate [a master science teacher certificate] to teach science in Grades 4-8; and

(3) the Master Science Teacher Certificate [a master science teacher certificate] to teach science in Grades 8-12.

(b) To be eligible for the Master Science Teacher Certificate, an individual [a master science teacher certificate, a person] must:

(1) hold a valid teaching certificate issued under this title;

(2) have at least three creditable years [øf] teaching experience as a classroom teacher, as defined in Chapter 153, Subchapter CC, of this title (relating to Commissioner's Rules on Creditable Years of Service) and the Texas Education Code, §5.001(2);

(3) satisfactorily complete a knowledge-based course of instruction through an SBEC-approved educator [a] preparation program [approved by the SBEC] on the science of teaching children science that includes training in science instruction and professional peer mentoring techniques that, through scientific testing, have been proven effective;

(4) satisfactorily complete a field-based practicum prescribed by an SBEC-approved educator [a] preparation program [approved by the SBEC];

(5) perform satisfactorily on the appropriate master science teacher certification examination prescribed by the SBEC; and

(6) satisfy any other requirement generally applicable to certificates issued under this title.

(c) The course of instruction prescribed under subsection (b)(3) of this section shall be developed by the Texas Education Agency staff [SBEC] in consultation with science faculty members at institutions of higher education.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Karen Loonam

Deputy Associate Commissioner, Educator Certification and Standards,  
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State Board for Educator Certification

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For further information, please call: (512) 475-1497



## CHAPTER 240. AMERICAN SIGN LANGUAGE CERTIFICATE

### 19 TAC §240.1

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Board for Educator Certification or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The State Board for Educator Certification (SBEC) proposes the repeal of §240.1, concerning provisions for the American Sign Language (ASL) certificate. The section establishes the program and assessment requirements for the ASL certificate. The proposed repeal would remove this provision for the ASL certificate from rule.

The proposed repeal is necessary since §240.1 is obsolete, with an expiration date of September 1, 2006, specified in rule. The proposed repeal of 19 TAC §240.1 is also necessary since the ASL certificate based on standards established for the Examination for the Certification of Educators in Texas (ExCET) has been replaced with the ASL certificate based on the standards established for the Texas Examination of Educator Standards (TExES). The current rules for the ASL certificate are codified in 19 TAC §231.1, Criteria for Assignment of Public School Personnel, and §233.15, Languages Other Than English. The proposed repeal results from the SBEC's rule review of 19 TAC Chapter 240 conducted in accordance with Texas Government Code, §2001.039.

The proposed repeal would have no procedural and reporting implications to school districts and educators. Also, the proposed repeal would have no locally maintained paperwork requirements to school districts and educators.

Jerel Booker, associate commissioner for educator quality and standards, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed repeal.

Mr. Booker has determined that for the first five-year period the proposed repeal is in effect the public and student benefit anticipated as a result of the proposed repeal would be one set of standards, TExES, codified in rule. There are no additional costs to persons or entities required to comply with the proposed repeal.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [sbecrules@tea.state.tx.us](mailto:sbecrules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed repeal submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and Standards, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Jerel Booker, not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The repeal is proposed under the Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and §21.041(b)(6), which requires the SBEC to provide for special or restricted certification of educators, including certification of instructors of ASL.

The proposed repeal implements the TEC, §21.031(a) and §21.041(b)(1), (2), and (6).

*§240.1. American Sign Language Certificate.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Karen Loonam

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State Board for Educator Certification

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## TITLE 22. EXAMINING BOARDS

### PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

#### CHAPTER 5. INTERIOR DESIGNERS SUBCHAPTER A. SCOPE; DEFINITIONS

##### 22 TAC §5.5

The Texas Board of Architectural Examiners proposes an amendment to §5.5, pertaining to definitions. The amendment implements recent legislation which changed the title restriction upon the use of the professional title "interior designer" to "registered interior designer". The amendment also changes the definition of the term "FIDER" to reflect the name change of the Foundation of Interior Design Education Research to the Council for Interior Design Accreditation (CIDA) and to note that FIDER is a predecessor to CIDA. The amendments will clarify rules to reflect current legal requirements and accurately identify the organization which accredits interior design education programs.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal impact on state or local government.

Ms. Hendricks has determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amended rule are as follows: the definition of delinquent registration status will accurately reflect the professional title which a delinquent registrant may not use and the definition of the term "FIDER" will give notice of the change of that organization's name. The public will benefit from the inclusion of accurate and current information in the rules of the board. The rule will have no impact on small or micro business. Therefore, consideration of a less costly alternative proposal is not required.

There will be no change in the cost to persons required to comply with the section.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment to this rule is proposed pursuant to §1051.202, Texas Occupations Code, which provide the Texas Board of Architectural Examiners with authority to promulgate rules, including rules related to the administration of Chapter 1053, Texas Occupations Code, relating to the practice of interior design.

The proposed amendment to this rule does not affect any other statutes.

##### *§5.5. Terms Defined Herein.*

The following words, terms, and acronyms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (17) (No change.)

(18) Delinquent--A registration status signifying that an Interior Designer

(A) has failed to remit the applicable renewal fee to the Board and

(B) is no longer authorized to use the title "registered interior designer" [or the term "interior design"] in Texas.

(19) - (23) (No change.)

(24) FIDER--Foundation for Interior Design Education Research. A predecessor to the Council for Interior Design Accreditation (CIDA).

(25) Foundation for Interior Design Education Research (FIDER)--An agency that sets standards for postsecondary interior design education and evaluates college and university interior design programs. A predecessor to the Council for Interior Design Accreditation (CIDA).

(26) - (60) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Cathy L. Hendricks

Executive Director

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8544

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#### SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

##### 22 TAC §5.131

The Texas Board of Architectural Examiners proposes an amendment to §5.131, pertaining to compliance and enforcement. The rule is amended to conform to recent legislative changes to restrictions upon the use of the professional title "interior designer." As amended the rule reflects the change to a restriction upon the use of the title "registered interior designer."

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal impact upon state or local government.

Ms. Hendricks has determined that for the first five-year period the amended rule is in effect the public benefit expected as a result of the amended rule is as follows: the rule will accurately reflect the statutory restrictions upon the use of the title "registered interior designer" and will not create the incorrect impression that the use of the professional title "interior designer" is restricted to those who are registered by the board as interior designers. The rule will have no impact on small or micro business. Therefore an analysis of a less costly alternative to the amendment is not required.

There will be no change in the cost to persons required to comply with the section.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment to this rule is proposed pursuant to §1051.202, Texas Occupations Code, and §1053.151, Texas Occupations Code, which provide the Texas Board of Architectural Examiners

with authority to promulgate rules, including rules related to the administration of chapter 1053, Texas Occupations Code, regulating the practice of interior design and which restricts usage of the title "registered interior designer" to persons registered with the board as interior designers.

The proposed amendment to this rule does not affect any other statutes.

*§5.131. General.*

In carrying out its responsibility to insure strict enforcement of the Interior Designers' Registration Law (the Act), the Board may investigate circumstances which appear to violate or abridge the requirements of the Act or the rules dealing with the practice of interior design and the use of the title "registered interior designer." [and the term "interior design."] Violations of the Act or the rules which cannot be readily resolved through settlement shall be disposed of by administrative, civil, or criminal proceedings as authorized by law.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Cathy L. Hendricks

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For further information, please call: (512) 305-8544



**22 TAC §5.133, §5.134**

The Texas Board of Architectural Examiners proposes amendments to §5.133 and §5.134 of Chapter 5, Subchapter G, Title 22, pertaining to professional titles and registration of interior design businesses. The amendments implement recent legislative changes to restrictions upon the use of the professional title "interior designer." As amended, the statutes restrict the title "registered interior designer." The amendments also implement recent changes in the law by striking prohibitions upon the use of the term "interior design."

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal impact upon state or local government.

Ms. Hendricks has determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amended rule are as follows: the rules will accurately reflect and implement the law as it currently exists. The public will benefit by referring to the laws accurately. The rule will have no impact on small or micro business. No analysis of less costly alternatives is required.

There will be no change in the cost to persons required to comply with the section.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment to this rule is proposed pursuant to §1051.202 and §1053.151, Texas Occupations Code, which provide the

Texas Board of Architectural Examiners with authority to promulgate rules, including rules related to restrictions upon the use of the title "registered interior designer".

The proposed amendment to this rule does not affect any other statutes.

*§5.133. Titles.*

(a) Interior Designers duly registered in Texas are authorized to use the title "registered interior designer" to describe themselves [and use the term "interior design" to describe services they offer and perform in Texas].

(b) A firm, partnership, corporation, or other business association may use the title "registered interior designer" [or the term "interior design" in its name or to describe services it offers or performs in Texas] only under the following conditions:

(1) The business employs at least one Interior Designer on a full-time basis or associates with at least one Interior Designer pursuant to the provisions of § [section] 5.132; and

(2) The Interior Designer(s) employed by or associated with the business pursuant to paragraph (1) of this subsection [subsection (b)(1) of this section] exercise Supervision and Control over all interior design services performed by nonregistrants on behalf of the business.

(c) No entity other than those qualified under subsections (a) and (b) of this section may use the title "registered interior designer" [or the term "interior design"] in its name [or to describe services it offers or performs in Texas].

(d) (No change.)

*§5.134. Business Registration.*

(a) A Principal for an Interior Design firm or other business entity that uses the title "registered interior designer" [or the term "interior design"] to describe itself [or a service it offers or performs in Texas] must annually register information regarding the firm or business entity with the Board.

(b) (No change.)

(c) If a business entity or association dissolves or otherwise becomes unable to lawfully use the title "registered interior designer" [or the term "interior design"] to describe itself [or its services], the Interior Designer or Principal who last registered the business entity or association shall so notify the Board in writing. Such notification must be postmarked or otherwise provided within thirty (30) days of the date of dissolution or the date the business entity or association became unable to lawfully use the title "registered interior designer" [and the term "interior design"]. A business entity or association may not continue to use the title "registered interior designer" [or the term "interior design"] unless another Interior Designer or Principal files information with the Board identifying himself or herself as the Principal for the business entity or association within that thirty (30) day period.

(d) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2009.

TRD-200903686



Cathy L. Hendricks  
Executive Director  
Texas Board of Architectural Examiners  
Earliest possible date of adoption: October 4, 2009  
For further information, please call: (512) 305-8544



## CHAPTER 7. ADMINISTRATION

### 22 TAC §7.10

The Texas Board of Architectural Examiners proposes an amendment to §7.10(b), pertaining to fees charged by the board. The proposed amendment eliminates a specified fee for registration examinations and includes a statement that the fees are set by examination providers under contract with the board. The examination providers have modified fees to apply to each section of the examination and in some cases created graduated fee schedules. As a result, a single specified fee in the board's fee schedule is not accurate. The amendments impose a \$5 fee for issuing replacement pocket cards (cards that serve as evidence of registration) to registrants in order to recover agency costs and eliminate an obsolete administrative fee for review of the Landscape Architectural Registration Examination.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, there will be a fiscal impact to the state in that the board, a state agency, will recover costs that it currently incurs. The board estimates in the first year the rule amendment is in effect it will recover \$7800 in the cost of administering the creation and issuance of 1560 replacement pocket cards. The board anticipates the charge for replacement cards will serve as a deterrent to misplacing or replacing cards and therefore estimates it will incur and recover costs in the amount of \$3700 in the second year, \$2000 in the third, and \$1000 in the third, fourth and fifth years the rule is in effect. Payments of examination fees are paid by the examinees directly to the examination provider. There will be no fiscal impact to the state arising from the modification to the fee schedule regarding examination fees. There will be no cost or fiscal impact upon local government.

Ms. Hendricks has determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amended rule are as follows: The agency will recover the cost of producing and distributing replacement pocket cards to registrants whose original cards are lost or destroyed. The cost to each registrant who obtains a replacement card will be \$5 per card. However, registrants are not required to possess a pocket card or to replace a missing pocket card. This is a discretionary expense to registrants. Clarifying the rule to eliminate obsolete and inaccurate fees will serve a public benefit in that the rule will have the benefit of providing correct information to registrants and other who may refer to the rule for fee information. The rule will have no impact on small or micro business. Therefore, there is no need to consider less costly alternatives to the amendment.

There will be an increase in the cost to persons who obtain replacement pocket cards. The Board currently bears the cost of replacing pocket cards. The amendment would transfer that cost to registrants who obtain replacement cards.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment to this rule is proposed pursuant to §§1051.651, 1052.054 and 1053.052, Texas Occupations Code Annotated, which provide the Texas Board of Architectural Examiners with authority to set fees reasonable and necessary to cover the costs of administering laws relating to the regulation of architecture, landscape architecture and interior design, respectively.

The proposed amendment to this rule does not affect any other statutes.

#### §7.10. General Fees.

(a) (No change.)

(b) ~~The [Effective September 1, 2008, the]~~ following fees shall apply to services provided by the Board in addition to any fee established elsewhere by the rules and regulations of the Board or by Texas law:

Figure: 22 TAC §7.10(b)

(c) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2009.

TRD-200903687

Cathy L. Hendricks

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: October 4, 2009

For further information, please call: (512) 305-8544



## PART 11. TEXAS BOARD OF NURSING

### CHAPTER 211. GENERAL PROVISIONS

#### 22 TAC §211.7

The Texas Board of Nursing (Board) proposes amendments to §211.7, concerning Executive Director. The Board is simultaneously proposing amendments and new paragraphs to §213.32, concerning Practice and Procedure. These proposed amendments and new paragraphs are necessary to: (i) implement Senate Bill (SB) 1415, enacted by the 81st Legislature, Regular Session, effective September 1, 2009; which adds new Subchapter N to the Occupations Code Chapter 301; (ii) revise and clarify the amount of administrative fines that may be imposed upon an individual in a disciplinary action; and (iii) clarify that the Executive Director of the Board is authorized to dispose of certain violations of Chapter 301 and Board policy and rule without the ratification of the Board. The proposed changes to §213.32 are also published in this edition of the *Texas Register*. The proposed amendments to §211.7 are necessary for consistency with the proposed changes to §213.32.

The Board is proposing amended §213.32(7) to clarify that the Executive Director is authorized to dispose of the violations specified in proposed new §213.32(2) and proposed amended §213.32(5) without the ratification of the Board. Proposed amended §213.32(7) also requires the Executive Director to report such cases to the Board at its regular meetings. The

types of violations specified in proposed new §213.32(2) and proposed amended §213.32(5) are appropriate for disposition through a fine and/or remedial education. Generally, such cases are of a fairly minor nature and do not result in harm to the public. As a result, these cases do not necessarily need to be reviewed and deliberated on by the Board. Instead, the provisions of proposed amended §213.32(7) allow the Executive Director to resolve these cases pursuant to established Board policies, rules, procedures, and requirements. This is beneficial to the Board because it reduces the number of Board Orders that must be reviewed and ratified by the Board. It is also beneficial to individuals receiving these types of orders because it allows the individual to resolve the matter in a more efficient manner.

The proposed amendments to §211.7(f)(1) are necessary for consistency with proposed amended §213.32(7). Under proposed amended §213.32(7), the Executive Director is authorized to dispose of the specified violations in proposed new §213.32(2) and proposed amended §213.32(5) through a fine and/or remedial education, without the ratification of the Board. The Executive Director is also required to report such cases to the Board at its regular meetings. These proposed provisions are similar to the existing provisions in §211.7(f). However, proposed new §213.32(2) specifies six new violations for which the Board may offer an individual a corrective action. A corrective action under the Occupations Code Subchapter N is a non-disciplinary action consisting of a fine, remedial education, or any combination of a fine and remedial education. Proposed amended §213.32(7) permits the Executive Director to dispose of a violation for which a corrective action is imposed, without Board ratification. Proposed amended §213.32(5) specifies the violations for which a fine and/or remedial education may be imposed by the Board in a disciplinary action. Proposed amended §213.32(7) permits the Executive Director to dispose of a violation specified in proposed amended §213.32(5), for which a fine and/or remedial education is imposed, without Board ratification. Although the specified violations in proposed new §213.32(2) and proposed amended §213.32(5) are similar to the violations specified in existing §211.7(f), they are not exactly the same. Further, existing §211.7(f) does not address corrective actions. Prior to the enactment of SB 1415, a corrective action was not an available mechanism through which a violation of Chapter 301 or Board policy or rule could be resolved. As such, the provisions of existing §211.7(f) apply only to disciplinary actions. The proposed amendments to §211.7(f) eliminate the listed violations in existing subparagraphs (A) - (M) and replace the listing with a reference to proposed new §213.32(2) and proposed amended §213.32(5). In this way, the provisions of proposed amended §211.7(f) will apply to both corrective actions and disciplinary actions in which the Board imposes a fine and/or remedial education. Further, proposed amended §211.7(f) makes clear that the Executive Director may accept an order issued under proposed new §213.32(2) and proposed amended §213.32(5) without Board ratification. These proposed amendments are consistent with the proposed amended and new provisions of §213.32. Finally, proposed new §211.7(f) re-emphasizes that the Executive Director must report summaries of dispositions to the Board at its regular meetings, which is also consistent with the provisions of proposed amended §213.32(7).

The following is a section-by-section overview of the proposal. Proposed amended §211.7(f)(1) provides that the Executive Director of the Board is authorized to accept orders issued under §213.32(2) and (5) on behalf of the Board and ratification of the Board is not necessary. Further, proposed amended §211.7(f)(1)

provides that the Executive Director is required to report summaries of dispositions to the Board at its regular meetings.

Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments are in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no anticipated effect on local employment or the local economy as a result of the proposal.

Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefits will be: (i) the implementation of the requirements of SB 1415; (ii) more efficient resolution of cases before the Board; and (iii) proper delegation of authority to the Executive Director, which results in more efficient regulation by the Board. There are no anticipated economic costs to persons who are required to comply with the proposal.

As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person who is required to comply with the proposed amendments.

The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 30 days from the date of publication in the *Texas Register* to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to [dusty.johnston@bon.state.tx.us](mailto:dusty.johnston@bon.state.tx.us), or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

The amendments are proposed under the Occupations Code §§301.453(a), 301.4531, 301.501, 301.502, 301.651 - 301.657, and 301.151. The Occupations Code §301.453(a) provides that, if the Board determines that a person has committed an act listed in §301.452(b), the Board shall enter an order imposing one or more of the following: (1) denial of the person's application for a license, license renewal, or temporary permit; (2) issuance of a written warning; (3) administration of a public reprimand; (4) limitation or restriction of the person's license, including limiting to or excluding from the person's practice one or more specified activities of nursing or stipulating periodic board review; (5) suspension of the person's license for a period not to exceed five years; (6) revocation of the person's license; or (7) assessment of a fine. The Occupations Code §301.4531(a) states that the Board by rule shall adopt a schedule of the disciplinary sanctions that the Board may impose under Chapter 301. In adopting the schedule of sanctions, the Board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action. The Occupations Code §301.4531(b) states, in determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the Board shall consider: (i) whether the person is being disciplined for multiple violations of either Chapter 301 or a rule or order adopted under Chapter 301 or has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and Chapter 301; (ii) the seriousness

of the violation; (iii) the threat to public safety; and (iv) any mitigating factors. The Occupations Code §301.4531(c) provides that, in the case of a person described by §301.4531(b)(1)(A), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and in the case of a person described by §301.4531(b)(1)(B), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the Board. The Occupations Code §301.501 provides that the Board may impose an administrative penalty on a person licensed or regulated under Chapter 301 who violates Chapter 301 or a rule or order adopted under Chapter 301. The Occupations Code §301.502(a) states that the amount of the administrative penalty may not exceed \$5,000 for each violation. Further, each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The Occupations Code §301.502(b) states that the amount of the penalty shall be based on: (i) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts and the hazard or potential hazard created to the health, safety, or economic welfare of the public; (ii) the economic harm to property or the environment caused by the violation; (iii) the history of previous violations; (iv) the amount necessary to deter a future violation; (v) efforts made to correct the violation; and (vi) any other matter that justice may require. The Occupations Code §301.651 provides that "corrective action" means a fine or remedial education imposed under §301.652. The Occupations Code §301.652(a) states that the Board may impose a corrective action on a person licensed or regulated under Chapter 301 who violates Chapter 301 or a rule or order adopted under Chapter 301. The corrective action: (i) may be a fine, remedial education, or any combination of a fine or remedial education; (ii) is not a disciplinary action under Subchapter J; and (iii) is subject to disclosure only to the extent a complaint is subject to disclosure under §301.466. The Occupations Code §301.652(b) authorizes the Board to adopt guidelines for the types of violations for which a corrective action may be imposed. The Occupations Code §301.653 states that, if the Executive Director determines that a person has committed a violation for which a corrective action may be imposed under the guidelines adopted under §301.652(b), the Executive Director may give written notice of the determination and recommendation for corrective action to the person subject to the corrective action. The notice may be given by certified mail. The notice must: (i) include a brief summary of the alleged violation; (ii) state the recommended corrective action; and (iii) inform the person of the person's options in responding to the notice. The Occupations Code §301.654 states that, not later than the 20th day after the date the person receives the notice under §301.653, the person may accept in writing the Executive Director's determination and recommended corrective action or reject the Executive Director's determination and recommended corrective action. The Occupations Code §301.655(a) states that, if the person accepts the Executive Director's determination and satisfies the recommended corrective action, the case is closed. The Occupations Code §301.655(b) states that, if the person does not accept the Executive Director's determination and recommended corrective action as originally proposed or as modified by the Board or fails to respond in a timely manner to the Executive Director's notice as provided by §301.654, the Executive Director shall terminate proceedings under Subchapter N and dispose of the matter as a complaint under Subchapter J. The Occupations Code §301.656

states that the Executive Director shall report periodically to the Board on the corrective actions imposed under Subchapter N, including: (i) the number of corrective actions imposed; (ii) the types of violations for which corrective actions were imposed; and (iii) whether affected nurses accepted the corrective actions. The Occupations Code §301.657(a) states that, except to the extent provided by §301.657, a person's acceptance of a corrective action under Subchapter N does not constitute an admission of a violation but does constitute a plea of nolo contendere. The Occupations Code §301.657(b) provides that the Board may treat a person's acceptance of corrective action as an admission of a violation if the Board imposes a sanction on the person for a subsequent violation of Chapter 301 or a rule or order adopted under Chapter 301. The Occupations Code §301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (1) perform its duties and conduct proceedings before the Board; (2) regulate the practice of professional nursing and vocational nursing; (3) establish standards of professional conduct for license holders Chapter 301; and (4) determine whether an act constitutes the practice of professional nursing or vocational nursing.

The following statutes are affected by this proposal:

Section 211.7 - Occupations Code §§301.453, 301.4531, 301.501, 301.502, 301.651 - 301.657, and 301.151.

§211.7. *Executive Director.*

(a) - (e) (No change).

(f) The Executive Director is authorized to accept the following orders on behalf of the Board and ratification by the Board is not necessary. The Executive Director will report summaries of dispositions to the Board at its regular meetings.

(1) Orders issued under §213.32(2) and (5) of this title (relating to Corrective Action Proceedings and Schedule of Administrative Fines). [consisting of a fine and/or education stipulations. The following violations may be appropriate for disposition by fine with or without educational stipulations:]

[(A) practice on a delinquent license for more than six months but less than two years;]

[(B) practice on a delinquent license for two to four years;]

[(C) practice on a delinquent license over four years;]

[(D) aiding, abetting or permitting a nurse to practice on a delinquent license;]

[(E) failure to comply with CE requirements;]

[(F) failure to comply with mandatory reporting requirements;]

[(G) failure to assure licensure/credentials of personnel for whom the nurse is administratively responsible;]

[(H) failure to provide employers, potential employers or the Board with complete and accurate answers to specific questions regarding employment or background (e.g., presenting incomplete employment history);]

[(I) failure to report unauthorized practice;]

[(J) failure to comply with Board requirements for change of name/address;]

[(K) failure to develop, maintain and implement a peer review plan according to statutory peer review requirements;]

~~[(L) failure to file, or cause to be filed, complete, accurate and timely reports required by Board Order; and]~~

~~[(M) failure to make complete and timely compliance with the terms of any stipulation contained in a Board Order.]~~

(2) (No change).

(g) (No change).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 24, 2009.

TRD-200903711

James W. Johnston

General Counsel

Texas Board of Nursing

Earliest possible date of adoption: October 4, 2009

For further information, please call: (512) 305-6811



## CHAPTER 213. PRACTICE AND PROCEDURE

### 22 TAC §213.32

The Texas Board of Nursing (Board) proposes amendments and new paragraphs to §213.32, concerning Schedule of Administrative Fine(s). Proposed new §213.32(1) - (4) are necessary to implement Senate Bill (SB) 1415, enacted by the 81st Legislature, Regular Session, effective September 1, 2009, which adds new Subchapter N to the Occupations Code Chapter 301. The Board is proposing the remaining amendments under the Occupations Code §§301.453(a), 301.4531, 301.501, 301.502, and 301.151 to revise and clarify the amount of administrative fines that may be imposed upon an individual in a disciplinary action.

#### Corrective Action Proceedings

SB 1415 enacts a significant change to the Occupations Code Chapter 301 that affects the regulation of licensees and individuals subject to Chapter 301. SB 1415 adds new Subchapter N, §§301.651 - 301.657, to Chapter 301. These new sections allow the Board to impose a corrective action on an individual who violates a provision of Chapter 301 or a rule or order adopted under Chapter 301. SB 1415 defines a corrective action as a non-disciplinary action consisting of a fine, remedial education, or any combination of a fine or remedial education. This is a particularly significant aspect of the new law. Disciplinary actions under the Occupations Code Subchapter J are reported by the Board to the public and to the Healthcare Integrity and Protection Data Bank (HIPDB), a national database created by the U.S. Department of Health and Human Services to combat fraud and abuse in health insurance and health care delivery. A corrective action under new Subchapter N, however, will not be reportable to the public and HIPDB. Further, SB 1415 makes a corrective action under new Subchapter N confidential by law and generally non-disclosable to the public. The Occupations Code §301.652(a)(3) provides that a corrective action is subject to disclosure only to the extent that a complaint is subject to disclosure under the Occupations Code §301.466. A complaint is confidential by law under §301.466(a) and is not subject to disclosure under the Government Code Chapter 552 or through discovery, subpoena, or other means of legal compulsion. While the Occupations Code §301.466(b) provides specific exceptions through which a complaint may be disclosed to a person besides

the Board and its employees and agents, these exceptions are limited in scope. In the same way, a corrective action under SB 1415 will not be disclosed unless one of the specified exceptions in §301.466(b) applies. SB 1415 also authorizes the Executive Director of the Board to offer an individual a corrective action if the individual has committed a violation for which a corrective action may be imposed. If the individual accepts the offer of the corrective action, SB 1415 requires the Board to close the case. However, if the individual chooses not to accept the offer of the corrective action, or if the individual fails to respond in a timely manner to the offer of the corrective action, SB 1415 requires the Executive Director to terminate the proceedings under new Subchapter N and to dispose of the matter as a complaint under Subchapter J.

SB 1415 requires the Board to adopt, by rule, guidelines for the types of violations for which a corrective action may be imposed under new Subchapter N. Proposed new §213.32(1) - (4) implements this requirement by: (i) identifying the specific violations for which a corrective action may be offered; (ii) establishing the eligibility requirements that an individual must meet in order to qualify to receive a corrective action; (iii) establishing the amount of a fine that may be imposed as part of a corrective action; (iv) clarifying that the Executive Director has the sole discretion to offer an individual a corrective action; and (v) prohibiting an individual from receiving a corrective action as the result of a contested case proceeding conducted under the Government Code Chapter 2001.

Proposed new §213.32(1) defines the term *corrective action* and clarifies that a corrective action under §213.32 is not a disciplinary action under Subchapter J. This proposed new paragraph is necessary to emphasize the difference between a corrective action proceeding under new Subchapter N and a disciplinary action under Subchapter J. SB 1415 specifically provides that a corrective action is not a disciplinary action. This distinction is significant because the Board's existing disciplinary policies, procedures, and requirements will not apply to a corrective action proceeding under new Subchapter N. Rather, the Board will apply the procedures and requirements of SB 1415 and the provisions of adopted §213.32 to a corrective action proceeding. As such, it is imperative that each licensee and individual regulated under Chapter 301 become familiar with the differences in these policies, procedures, and requirements.

The provisions of new §213.32(2) - (4) are being proposed in order to establish the specific procedures and requirements that will apply to a corrective action proceeding under new Subchapter N. Proposed new §213.32(2) specifies six types of violations for which the Board may offer an individual a corrective action. These are the only types of violations that may be resolved through a corrective action proceeding. The Board has determined that it is not appropriate for a corrective action to be offered in cases where: (i) errors in practice or medication administration have occurred; (ii) an individual's criminal conduct is at issue; (iii) an individual's drug abuse, chemical dependency, or substance abuse is at issue; or (iv) an individual's physical or mental status is at issue. This is primarily because a corrective action will not be reported to the public or HIPDB. As a result, members of the public, such as an individual's employer or an individual's clients, will not be made aware of the individual's conduct that resulted in the corrective action. This does not generally concern the Board *provided that* the individual's conduct is isolated and relatively minor in nature. However, the Board is concerned with cases involving more serious conduct, such as medication administration er-

rors and impairment on duty issues. In these types of cases, an individual's conduct should be evaluated and sanctioned pursuant to the Board's established disciplinary policies, procedures, and requirements, and notice of the individual's conduct should be provided to the public and HIPDB. The Board has determined that it cannot effectively regulate an individual who has committed a serious violation through a corrective action proceeding. For violations of a serious nature, the Board must be able to proceed under its established disciplinary policies, procedures, and requirements that provide for the sanctioning, monitoring, and reporting of such conduct. For violations that involve conduct that is relatively minor in nature, however, the Board believes that corrective action proceedings can effectively address those issues. Therefore, the Board is proposing new §213.32(2), which specifies six minor, administrative violations that may be resolved through corrective action proceedings. These specified violations are typically minor in nature and do not involve harm to the public. As such, the Board believes that these types of violations may be safely resolved through a corrective action proceeding. Proposed new §213.32(2) also makes clear that a corrective action is only appropriate in situations where an individual has committed one of the specified violations for the first time. If an individual has committed one of the specified violations more than once, the individual will not be eligible to receive a corrective action. This proposed requirement is necessary to ensure that an individual's repeated pattern of conduct is reviewed under the Board's established disciplinary policies and procedures to determine whether a more severe sanction should be imposed on the individual in order to prevent the individual from committing the violation again.

Proposed new §213.32(3) further clarifies that an individual will not be eligible to receive a corrective action if the individual has committed more than one of the violations specified in proposed new §213.32(2). Like the provision in proposed new §213.32(2), this proposed new requirement is necessary to ensure that an individual's pattern of conduct is reviewed under the Board's existing disciplinary policies and procedures to determine whether a more severe sanction should be imposed in order to prevent the re-occurrence of the conduct. While the Board believes that a single violation committed by an individual may be appropriately resolved through a corrective action proceeding under new Subchapter N, the Board has determined that multiple violations may indicate a more serious disciplinary issue and should be resolved through the Board's established disciplinary policies and procedures. The proposed amendments and new paragraphs support this position by prohibiting an individual from receiving a corrective action if the individual has committed multiple violations. SB 1415 permits a corrective action to consist of remedial education, a fine, or any combination of remedial education and a fine. Pursuant to new Subchapter N, the Board is proposing that the amount of any fine imposed as part of a corrective action under new Subchapter N be \$500. The Board has considered the following factors in determining the amount of this proposed fine: (i) the seriousness of the violations for which a corrective action may be imposed; (ii) the amount necessary to deter future violations; (iii) the harm likely caused by the violations for which a corrective action may be imposed; and (iv) the hazard or potential hazard to the health, safety, and economic welfare of the public. Although the violations specified in proposed new §213.32(2) are typically less serious than the violations involved in a disciplinary action, such conduct should not be repeated. Further, all violations of statute or Board rule or policy should be taken seriously, regardless of whether the conduct results in a

corrective action under new Subchapter N or a disciplinary action under Subchapter J. As such, the Board has determined that a fine in the amount of \$500 should be sufficient to deter an individual from repeating the conduct that resulted in the corrective action. Further, the Board has determined that a fine in the amount of \$500 is appropriate in light of the seriousness of the types of violations for which a corrective action may be imposed and the risk of harm to the public that the violations may cause.

Finally, proposed new §213.32(4) is necessary to clarify that the Executive Director of the Board has the sole discretion to offer an individual a corrective action under new Subchapter N. Proposed new §213.32(4) also clarifies that a corrective action is not available as the result of a contested case proceeding under the Government Code Chapter 2001. SB 1415 provides that the Executive Director may determine if an individual has committed a violation for which a corrective action may be imposed. Further, SB 1415 provides that the Executive Director may give written notice of her determination and recommendation for the corrective action to the individual. SB 1415 also requires a case to be closed if the individual accepts the Executive Director's determination and satisfies the recommended corrective action. If the individual does not accept the Executive Director's determination and recommended corrective action, however, SB 1415 directs the Executive Director to terminate proceedings under new Subchapter N and to dispose of the matter as a complaint under Subchapter J. The provisions of proposed new §213.32(4) are consistent with these new statutory sections. First, proposed new §213.23(4) re-iterates the difference between a corrective action proceeding under new Subchapter N and a disciplinary proceeding under Subchapter J. Because a corrective action proceeding is not a disciplinary action under Subchapter J and is not subject to the Government Code Chapter 2001, a corrective action is not a remedy that will be available to an individual as the result of a contested case under the Government Code Chapter 2001. Only if an individual rejects the offer of a corrective action or fails to timely respond to the offer of the corrective action will the matter be terminated under new Subchapter N and be disposed of as a disciplinary action under Subchapter J. In that situation, an individual will be entitled to the remedies available as the result of a contested case under the Government Code Chapter 2001. Those remedies, however, will not include a corrective action. Proposed new §213.32(4) re-emphasizes this distinction and clarifies that a corrective action is not a remedy that will be available to an individual who is afforded a hearing in a disciplinary matter at the State Office of Administrative Hearings.

#### Fines in Disciplinary Matters

The remaining amendments are necessary to revise and clarify the amount of administrative fines that may be imposed upon an individual in a disciplinary action. The provisions of proposed amended §213.32(5) and (6) apply only to disciplinary actions under Subchapter J. Proposed amended §213.32(5) addresses disciplinary actions that are typically resolved through remedial education and/or a fine. Proposed amended §213.32(6) addresses disciplinary actions that are resolved through other sanctions, such as Warnings, Reprimands, Suspensions, or Revocations. Fines may also be imposed as part of the sanctions in these disciplinary actions. The provisions of proposed amended §213.32(5) and (6) will not apply to a fine imposed as part of a corrective action under new Subchapter N and proposed new §213.32(1) - (4). This is an important distinction. The provisions of proposed amended §213.32(5) and (6) are separate and apart from the proposed provisions of new §213.32(1) - (4). Proposed new §213.32(1) - (4) will apply only to corrective ac-

tions under new Subchapter N. Proposed amended §213.32(5) and (6) will apply only to disciplinary actions under Subchapter J. The Board originally adopted existing §213.32 on August 15, 2002, and amended it on May 17, 2004. While the proposed amendments to §213.32(5) and (6) generally retains the content of the existing rule, including the specified types of violations for which administrative fines may be imposed, the amounts of the fines that correspond to the specified types of violations have been revised. At its April, 2008, Board meeting, the Board approved the use of a Disciplinary Matrix (Matrix) in its disciplinary cases to assist the Board in analyzing violations of Chapter 301 and Board policies and rules and imposing consistent and fair sanctions for those violations. The Matrix was published in the May 9, 2008, issue of the *Texas Register* (33 TexReg 3826), for public comment. Since that time, the Board has utilized the Matrix to analyze an individual's conduct and to determine the appropriate sanction for that conduct. For each violation specified in the Occupations Code §301.452(b), the Matrix contains a corresponding recommended sanction, including the amount of an administrative fine where appropriate. The amounts of the fines in existing §213.32 are being proposed for amendment in order to achieve consistency with the amount of the fines specified in the Matrix. Generally, the existing amounts of fines in §213.32 are lower than the amounts of fines specified in the Matrix. This is primarily because existing §213.32 has not been amended by the Board since 2004. Proposed amended §213.32(5) and (6) are intended to correct any inconsistencies between existing §213.32 and the Matrix by revising the amounts of the fines in §213.32 to be consistent with the amounts of the fines specified in the Matrix. For the most part, this can be accomplished by increasing the amounts of the fines in existing §213.32 from \$100 to \$250 for the first occurrence of a specified violation and from \$200 or \$250 to \$500 for a subsequent occurrence of a specified violation. These proposed revisions are necessary to ensure the consistent application of Board policy in disciplinary cases, which ultimately results in fairer and more efficient regulation. Further, the proposed amendments to §213.32(5) and (6) are authorized under the Occupations Code §§301.453(a), 301.4531, 301.501, and 301.502. The Occupations Code §301.453(a) authorizes the imposition of a fine in a disciplinary case. The Occupations Code §301.501 specifically authorizes the Board to impose an administrative penalty for a violation of Chapter 301 or a rule or order adopted under Chapter 301. The Occupations Code §301.4531(b) and §301.502 require the Board to consider the following factors when determining the appropriate sanction, including the amount of any administrative fine, in a disciplinary case: (i) whether an individual is being disciplined for multiple violations of Chapter 301 or a rule or order adopted under Chapter 301; (ii) whether an individual has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and Chapter 301; (iii) the seriousness of the violation; (iv) the threat or hazard to public safety; (v) the amount necessary to deter a future violation; (vi) efforts made to correct the violation; and (vii) any mitigating factors or other matters that justice may require. The Board has considered these factors in specifying the amounts of the fines in the Board's Matrix and in proposed amended §213.32(5) and (6). First, the Board has identified specific violations for which a fine may be imposed in a disciplinary case. Second, the Board has established a range of fines for the specified violations. Third, the Board has established the amount of a fine for the first occurrence of a violation and for a subsequent occurrence of the violation. Fourth, the Board has distinguished the severity

of the specified violations by separating the violations into two separate subparagraphs. Proposed amended §213.32(5) addresses violations that may be resolved through remedial education and/or a fine while proposed amended §213.32(6) addresses more serious violations that may be resolved through sanctions other than remedial education, such as Warnings, Reprimands, Suspensions, or Revocations. Typically, proposed amended §213.32(6) addresses conduct that carries a greater risk of public harm than the violations addressed by proposed amended §213.32(5). The Board may also impose fines for the violations specified in proposed amended §213.32(6). Finally, proposed §213.32(6) addresses situations in which an individual commits several of the violations specified in proposed amended §213.32(2) and proposed amended §213.32(5).

Proposed amended §213.32(7) is necessary to clarify that the Executive Director is authorized to dispose of the violations specified in proposed new §213.32(2) and proposed amended §213.32(5) without the ratification of the Board. Specifically, the proposed provision authorizes the Executive Director to offer and accept corrective actions under new Subchapter N without the necessity of the Board ratifying those actions. The proposed provision also authorizes the Executive Director to offer and accept disciplinary actions that result in remedial education, with or without a fine, without the necessity of the Board ratifying those actions. While the Executive Director is required to report these matters to the Board during its regularly scheduled meetings, the proposal allows the Executive Director to resolve these cases in as quick and efficient manner as possible. This is beneficial to the Board because it reduces the number of corrective action orders and disciplinary orders that must be reviewed and ratified by the Board. It is beneficial to regulated individuals, as well, because it allows the individuals to resolve matters with the Board in a faster and more efficient manner.

The remaining amendments are necessary to re-designate the paragraphs and subparagraphs of the amended section accordingly.

The following is a section-by-section overview of the proposal. The title of §213.32 is being proposed for amendment in order to include the new subject matter of the section, *corrective action proceedings*, and to correct a grammatical error. Proposed new §213.32(1) provides that, for purposes of §213.32 only, *corrective action* has the meaning assigned by the Occupations Code §301.651. Further, proposed new §213.32(1) states that a corrective action imposed under §213.32 is not a disciplinary action under the Occupations Code Chapter 301 Subchapter J. Proposed new §213.32(2) provides that, pursuant to the Occupations Code §301.652, the Board may impose a corrective action for the first occurrence of the following violations: (i) practice on a delinquent license for more than six months but less than one year; (ii) failure to comply with continuing competency requirements; (iii) failure to assure licensure/credentials of personnel for whom the nurse is administratively responsible; (iv) failure to provide employers, potential employers, or the Board with complete and accurate answers to either oral or written questions on subject matters including, but not limited to: employment history, licensure history, and criminal history; (v) failure to comply with Board requirements for change of name/address; and (vi) failure to develop, maintain, and implement a peer review plan according to statutory peer review requirements. Proposed new §213.32(3) states that an individual will not be eligible for a corrective action if the individual has committed more than one of the violations listed in proposed new §213.32(2). Further, if a fine is imposed by the Board as part of a corrective ac-

tion under proposed new §213.32(2), proposed new §213.32(3) states that the amount of the fine shall be \$500. Proposed new §213.32(4) states that the opportunity to enter into an agreed corrective action order is at the sole discretion of the Executive Director and is not available as a result of a contested case proceeding conducted pursuant to the Government Code Chapter 2001. Proposed amended §213.32(5) provides that a fine, with or without remedial education stipulations, may be imposed in a disciplinary matter for the following violations in the following amounts: (i) failure to comply with continuing competency requirements, \$250 for the first occurrence and \$500 for a subsequent occurrence; (ii) failure to comply with mandatory reporting requirements, \$250 - \$500 for the first occurrence and \$500 - \$1,000 for a subsequent occurrence; (iii) failure to assure licensure/credentials of personnel for whom the nurse is administratively responsible, \$250 - \$500 for the first occurrence and \$500 - \$1,000 for a subsequent occurrence; (iv) failure to provide employers, potential employers, or the Board with complete and accurate answers to either oral or written questions on subject matters including but not limited to: employment history, licensure history, criminal history, \$250 - \$800 for the first occurrence and \$500 - \$1,000 for a second occurrence; failure to report unauthorized practice, \$250 - \$500 for the first occurrence and \$500 - \$1,000 for a subsequent occurrence; (v) failure to comply with Board requirements for change of name/address, \$250 for the first occurrence and \$300 for a subsequent occurrence; (vi) failure to develop, maintain and implement a peer review plan according to statutory peer review requirements, \$250 - \$1,000 for the first occurrence and \$500 - \$1,000 for a subsequent occurrence; (vii) failure to file, or cause to be filed, complete, accurate and timely reports required by Board order, \$250 for the first occurrence; failure to make complete and timely compliance with the terms of any stipulation contained in a Board order, \$250 for the first occurrence; (viii) failure to report patient abuse to the appropriate authority of the State of Texas, including but not limited to, providing inaccurate or incomplete information when requested from said authorities, \$500 for the first occurrence and \$1,000 - \$5,000 for the second occurrence; and (ix) other non-compliance with the NPA, Board rules or orders which does not involve fraud, deceit, dishonesty, intentional disregard of the NPA, Board rules, Board orders, harm or substantial risk of harm to patients, clients or the public, \$250 - \$500 for the first occurrence and \$500 - \$1,000 for a subsequent occurrence. Proposed amended §213.32(6) provides that the following violations may be appropriate for disposition by fine in conjunction with one or more of the penalties/sanctions contained elsewhere in the Board's rules: (i) violations other than those listed in proposed new §213.32(2) and proposed amended §213.32(5), \$250 - \$1,000 for the first occurrence and \$500 - \$1,000 for a subsequent occurrence; and (ii) a cluster of violations listed in proposed new §213.32(2) and proposed amended §213.32(5), \$250 - \$5,000. Proposed amended §213.32(7) provides that the Executive Director is authorized to dispose of violations listed in proposed new §213.32(2) and proposed amended §213.32(5) without ratification by the Board. Further, the Executive Director shall report such cases to the Board at its regular meetings.

Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments and new paragraphs are in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal.

Ms. Thomas has also determined that for each year of the first five years the proposed amendments and new paragraphs are

in effect, there will be public benefits, and there will be potential costs for individuals required to comply with the proposal.

The anticipated public benefits will be the adoption of requirements that: (i) implement SB 1415; (ii) provide individuals with an additional option for resolving violations of Chapter 301 and Board policy and rule; (iii) promote consistency with the provisions of the Board's Disciplinary Matrix; and (iii) ensure the protection of the public health, safety, and welfare. First, SB 1415 and the proposed amendments and new paragraphs provide individuals with an opportunity to resolve certain violations of Chapter 301 and Board policy and rule through a non-disciplinary action. This new option is beneficial to both the Board and individuals regulated under Chapter 301. Under SB 1415 and the proposed amendments and new paragraphs, individuals will be able to resolve minor, administrative violations of Chapter 301 and Board policy and rule through a corrective action proceeding. This is beneficial to regulated individuals because a corrective action proceeding is not reported to the public or HIPDB. As long as an individual satisfies the conditions of the corrective action, the corrective action will not be reported as part of the individual's disciplinary history. Prior to the enactment of SB 1415, an individual that committed a violation of Chapter 301 or Board policy or rule was limited to resolving the matter through a disciplinary action, even in situations where the violation resulted in remedial education or a fine. Further, all disciplinary actions are reported by the Board to the public and HIPDB, regardless of the severity of the violation. The Board believes that serious violations warrant such reporting and monitoring. However, the Board recognizes that some minor violations do not. As a result, proposed new §213.32(2) specifies the types of violations for which a corrective action may be imposed. These violations are of a minor nature and have a low risk of harm to the public. The Board has also proposed additional safeguards to ensure that individuals who have committed multiple violations are not eligible to receive a corrective action. These safeguards are necessary to protect the public from patterns of repeated conduct that could result in harm. In this way, the proposed amendments strike an appropriate balance between the private interests of regulated individuals and the protection of the public health, safety, and welfare. Second, the proposed amendments promote consistency in the Board's disciplinary policies, procedures, and requirements. The provisions of proposed amended §213.32(5) and (6) apply to disciplinary actions under Subchapter J. Specifically, these provisions identify the amount of fines that may be imposed for a specific violation in a disciplinary action. These amendments are necessary to ensure that the amounts of fines in §213.32 are consistent with the amounts of fines specified in the Board's Disciplinary Matrix. Consistency among Board disciplinary policies, procedures, and requirements results in fair and efficient regulation, which benefits regulated individuals, as well as the public at large.

Potential Costs for Individuals Required to Comply with the Proposal.

The proposal permits the Board to offer an individual a corrective action to resolve certain violations of Chapter 301 and Board policy and rule. The proposal also prescribes the requirements that an individual must meet in order to be eligible to receive a corrective action. The proposal also sets the amount of the fine that may be imposed as part of a corrective action and revises the amounts of the fines that may be imposed in a disciplinary action. Not every licensee or individual regulated under Chapter 301 will be subject to the proposal. Only those individuals who commit violations of Chapter 301 and Board policy and rule will

be affected by the proposal. The proposal will have no effect on individuals who do not commit violations of Chapter 301 and Board policy and rule. There will be associated costs of compliance with the proposal, however, for those individuals who commit violations of Chapter 301 and Board policy and rule. The probable costs associated with the proposed amendments and new paragraphs result from proposed new §213.32(2) and (3) and proposed amended §213.32(5) and (6).

Proposed new §213.32(2) identifies the violations that may be resolved through a corrective action proceeding. SB 1415 provides that a corrective action may consist of remedial education, a fine, or any combination of remedial education and a fine. Proposed new §213.32(3) provides that the amount of a fine imposed as part of a corrective action will be \$500. The probable compliance costs associated with new §213.32(2) and (3) may vary among individuals depending upon several factors, including: (i) the violation that was committed by the individual; (ii) whether remedial education, a fine, or remedial education and a fine is imposed upon the individual as part of the corrective action; and (iii) the type of remedial education, if any, that is imposed upon the individual as part of the corrective action. The type of remedial education that may be imposed by the Board in a particular case will vary based upon the type of violation that was committed by the individual. The purpose of remedial education is to provide additional instruction to an individual regarding a particular area of deficiency. For the violations specified in proposed amended §213.21(2), for example, a Nursing Jurisprudence and Ethics Course or a Critical Thinking Course may be appropriate. The remedial education courses are offered by approved third party providers. The costs associated with a particular remedial education course will vary from provider to provider. The Board does not require an individual to enroll in a particular provider's course. Rather, the Board requires that an individual complete a specified remedial education course sponsored by any approved provider. As such, each individual is free to choose the most efficient and economical manner of completing a required remedial education course. For those individuals that are required to complete a remedial education course as part of a corrective action under new Subchapter N, the Board estimates the costs of compliance to range between \$185 - \$300. This estimate is based upon the following factors. The Board collected a sampling of common remedial education courses currently being offered by various approved providers. Based upon the information received by the Board during its sampling, the Board estimates that a Nursing Jurisprudence and Ethics course will cost between \$185 - \$250; a documentation course will cost between \$200 - \$300; and a critical thinking course will cost between \$200 - \$300. The cost of a particular course, however, will vary based upon the following factors: (i) the geographical location of the individual; (ii) the availability of instructors; (iii) the availability of facilities; and (iv) whether an individual will be required to travel to a different location in order to attend a certain course. Each individual, however, has the information necessary to estimate his or her own compliance costs. Proposed new §213.32(3) also provides that the amount of a fine imposed as part of a corrective action will be \$500. An individual is not eligible to receive a corrective action under the proposed amendments and new sections if the individual has committed one of the specified violations more than once, or has committed more than one of the specified violations. As such, the Board estimates that any fine that is imposed on an individual as part of a corrective action will not exceed \$500. Each individual, however, has the information necessary to estimate his or her own compliance costs.

Proposed amended §213.32(5) revises the amounts of the fines that may be imposed in disciplinary actions. Further, proposed amended §213.32(5) makes clear that a fine may be imposed in a disciplinary action, with or without the additional imposition of a remedial education course. Proposed amended §213.32(5) applies only to disciplinary actions in which a fine and/or remedial education is the appropriate sanction. The probable costs of compliance with §213.32(5) may vary among individuals, based upon the following factors: (i) the particular violation committed by the individual; (ii) whether the individual has committed the violation previously; (iii) and whether the Board imposes a fine or a fine and remedial education upon the individual. The probable estimated costs associated with completing a remedial education course as part of a corrective action under proposed new §213.32(2) have already been addressed in the foregoing paragraphs of this Public Benefit/Cost note. The probable estimated costs of completing a remedial education course as part of a disciplinary action under proposed amended §213.32(5) are estimated to be the same as the costs of completing a remedial education course as part of a corrective action under proposed new §213.32(2). This is because the Board anticipates that the same types of remedial education courses will be imposed upon an individual for one of the violations specified in proposed amended §213.32(5) as will be imposed upon an individual for one of the violations specified in proposed new §213.32(2). The types of violations specified in proposed new §213.32(2) and proposed amended §213.32(5) are similar in nature. As a result, the same remedial education courses should be appropriate to address an individual's deficiencies in these similar areas. The amount of the fines that are being proposed to apply to a disciplinary action in amended §213.32(5), however, differ from the amount of the fine that is being proposed to apply to a corrective action in new §213.32(3). The Board estimates that the probable compliance costs associated with a fine imposed under proposed amended §213.32(5) will range between \$250 - \$5,000. The amount of the fine may vary among individuals, however, based upon the following factors: (i) the particular violation for which the fine is being imposed; (ii) whether the individual has committed the violation more than once; (iii) the seriousness of the violation; (iv) the amount necessary to deter the conduct; (v) the potential harm to the public health, safety, and welfare; (vi) efforts made to correct the violation; and (vii) any mitigating factors or other matters that justice may require. Each individual, however, has the information necessary to estimate his or her own compliance costs.

Proposed amended §213.32(6) also revises the amounts of the fines that may be imposed in disciplinary actions. However, proposed amended §213.32(6) applies to disciplinary actions in which a sanction other than remedial education is imposed upon an individual. Typically, such sanctions include Warnings, Reprimands, Suspensions, and Revocations. Proposed amended §213.32(6) also provides that a fine may be imposed in conjunction with an appropriate sanction. The probable costs of compliance with §213.32(6) may vary among individuals, based upon the following factors: (i) the particular violation committed by an individual; (ii) whether the individual has committed the violation previously; (iii) whether the Board imposes a fine or a fine and remedial education as part of the sanction imposed upon the individual. For those individuals who are required to complete a remedial education course as part of an imposed sanction, the Board estimates the costs of compliance to range between \$185 - \$1,000. The probable estimated costs associated with completing a remedial education course as part of a corrective action under proposed new §213.32(2) have already been addressed in the foregoing paragraphs of this Public Ben-



efit/Cost note. The probable estimated costs of completing a remedial education course in Nursing Jurisprudence and Ethics, documentation, or critical thinking as part of a corrective action under proposed new §213.32(2) are estimated to be the same as the estimated costs of completing the same types of remedial education courses as part of a disciplinary action under proposed amended §213.32(6). However, the specified violations in proposed amended §213.32(6) typically involve more serious conduct than the violations involved in a corrective action proceeding, such as medication administration or practice errors that result in patient harm. In these cases, the Board will typically require an individual to complete additional remedial education courses, such as medication administration and patient assessment courses. The Board collected a sampling of remedial education courses that are currently being offered by various approved providers in the areas of medication administration and patient assessment. Based upon the information received by the Board during its sampling, the Board estimates that a medication administration course will cost between \$700 - \$800 and a physical assessment course with a clinical component will cost between \$500 - \$1,000. The cost of any particular course, especially those involving a clinical component, will vary based upon the following factors: (i) the geographical location of the individual; (ii) the availability of instructors and/or preceptors; (iii) the availability of facilities; (iv) whether professional liability insurance is required to enroll in a course, which is estimated to cost approximately \$250 - \$500 per year; (v) whether a criminal background check is required to enroll in a course, which is estimated to cost approximately \$50 - \$75; (vi) whether certain certifications or vaccinations are required to enroll in a course, which are estimated to cost approximately \$20 - \$75; and (vii) whether an individual must travel to a different location in order to attend a certain course. Each individual, however, has the information necessary to estimate his or her own compliance costs. The amounts of the fines in proposed amended §213.32(6) range between \$250 - \$5,000. If a fine is imposed in a disciplinary action under proposed amended §213.32(6), the amount of the fine may vary among individuals, based upon the following factors: (i) the particular violation for which the fine is being imposed; (ii) whether the individual has committed a violation more than once; (iii) whether the individual has committed a cluster of violations; (iv) the seriousness of the violation; (v) the amount necessary to deter the conduct; (vi) the potential harm to the public health, safety, and welfare; (vii) efforts made to correct the violation; and (viii) any mitigating factors or other matters that justice may require. Each individual, however, has the information necessary to estimate his or her own compliance costs. Any other costs to comply with the proposal result from the enactment of the Occupations Code Chapter 301, including new Subchapter N, and are not a result of the adoption, enforcement, or administration of the proposal.

As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments and new paragraphs will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposal because no individual, Board regulated entity, or other entity required to comply with the proposal meets the definition of a small or micro business under the Government Code §2006.001(1) or §2006.001(2). The Government Code §2006.001(1) defines a micro business as a legal entity, including a corporation, partnership, or sole proprietorship that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has not more than 20 employees. The Government Code §2006.001(2) defines a small business

as a legal entity, including a corporation, partnership, or sole proprietorship, that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has fewer than 100 employees or less than \$6 million in annual gross receipts. Each of the elements in §2006.001(1) and §2006.001(2) must be met in order for an entity to qualify as a micro business or small business. The only entities subject to the proposal are licensees and individuals regulated under Chapter 301. Because such licensees and individuals are not independently owned and operated legal entities that are formed for the purpose of making a profit, no licensee or individual regulated under Chapter 301 qualifies as a micro business or small business under the Government Code §2006.001(1) or §2006.001(2). Therefore, in accordance with the Government Code §2006.002(c) and (f), the Board is not required to prepare a regulatory flexibility analysis.

The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 30 days from the date of publication in the *Texas Register* to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.state.tx.us, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

The amendments and new paragraphs are proposed under the Occupations Code §§301.453(a), 301.4531, 301.466(a) and (b), 301.501, 301.502, 301.651 - 301.657, and 301.151. The Occupations Code §301.453(a) provides that, if the Board determines that a person has committed an act listed in §301.452(b), the Board shall enter an order imposing one or more of the following: (1) denial of the person's application for a license, license renewal, or temporary permit; (2) issuance of a written warning; (3) administration of a public reprimand; (4) limitation or restriction of the person's license, including limiting to or excluding from the person's practice one or more specified activities of nursing or stipulating periodic board review; (5) suspension of the person's license for a period not to exceed five years; (6) revocation of the person's license; or (7) assessment of a fine. The Occupations Code §301.4531(a) states that the Board by rule shall adopt a schedule of the disciplinary sanctions that the Board may impose under Chapter 301. In adopting the schedule of sanctions, the Board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action. The Occupations Code §301.4531(b) states, in determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the Board shall consider: (i) whether the person is being disciplined for multiple violations of either Chapter 301 or a rule or order adopted under Chapter 301 or has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and Chapter 301; (ii) the seriousness of the violation; (iii) the threat to public safety; and (iv) any mitigating factors. The Occupations Code §301.4531(c) provides that, in the case of a person described by §301.4531(b)(1)(A), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and in the case of a person described by §301.4531(b)(1)(B), the Board shall consider tak-

ing a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the Board. The Occupations Code §301.466(a) provides that a complaint and investigation concerning a nurse under Subchapter J and all information and material compiled by the Board in connection with the complaint and investigation are confidential and not subject to disclosure under the Government Chapter 552 and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to anyone other than the Board or a Board employee or agent involved in license holder discipline. The Occupations Code §301.466(b) provides that, notwithstanding §301.466(a), information regarding a complaint and an investigation may be disclosed to: (i) a person involved with the Board in a disciplinary action against the nurse; (ii) a nursing licensing or disciplinary Board in another jurisdiction; (iii) a peer assistance program approved by the Board under the Health and Safety Code Chapter 467; (iv) a law enforcement agency; or (v) a person engaged in bona fide research, if all information identifying a specific individual has been deleted. The Occupations Code §301.501 provides that the Board may impose an administrative penalty on a person licensed or regulated under Chapter 301 who violates Chapter 301 or a rule or order adopted under Chapter 301. The Occupations Code §301.502(a) states that the amount of the administrative penalty may not exceed \$5,000 for each violation. Further, each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The Occupations Code §301.502(b) states that the amount of the penalty shall be based on: (i) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts and the hazard or potential hazard created to the health, safety, or economic welfare of the public; (ii) the economic harm to property or the environment caused by the violation; (iii) the history of previous violations; (iv) the amount necessary to deter a future violation; (v) efforts made to correct the violation; and (vi) any other matter that justice may require. The Occupations Code §301.651 provides that "corrective action" means a fine or remedial education imposed under §301.652. The Occupations Code §301.652(a) states that the Board may impose a corrective action on a person licensed or regulated under Chapter 301 who violates Chapter 301 or a rule or order adopted under Chapter 301. The corrective action: (i) may be a fine, remedial education, or any combination of a fine or remedial education; (ii) is not a disciplinary action under Subchapter J; and (iii) is subject to disclosure only to the extent a complaint is subject to disclosure under §301.466. The Occupations Code §301.652(b) authorizes the Board to adopt guidelines for the types of violations for which a corrective action may be imposed. The Occupations Code §301.653 states that, if the Executive Director determines that a person has committed a violation for which a corrective action may be imposed under the guidelines adopted under §301.652(b), the Executive Director may give written notice of the determination and recommendation for corrective action to the person subject to the corrective action. The notice may be given by certified mail. The notice must: (i) include a brief summary of the alleged violation; (ii) state the recommended corrective action; and (iii) inform the person of the person's options in responding to the notice. The Occupations Code §301.654 states that, not later than the 20th day after the date the person receives the notice under §301.653, the person may accept in writing the Executive Director's determination and recommended corrective action or reject the Executive Director's determination and recommended corrective action. The Occupations Code §301.655(a) states that, if the person accepts

the Executive Director's determination and satisfies the recommended corrective action, the case is closed. The Occupations Code §301.655(b) states that, if the person does not accept the Executive Director's determination and recommended corrective action as originally proposed or as modified by the Board or fails to respond in a timely manner to the Executive Director's notice as provided by §301.654, the Executive Director shall terminate proceedings under Subchapter N and dispose of the matter as a complaint under Subchapter J. The Occupations Code §301.656 states that the Executive Director shall report periodically to the Board on the corrective actions imposed under Subchapter N, including: (i) the number of corrective actions imposed; (ii) the types of violations for which corrective actions were imposed; and (iii) whether affected nurses accepted the corrective actions. The Occupations Code §301.657(a) states that, except to the extent provided by §301.657, a person's acceptance of a corrective action under Subchapter N does not constitute an admission of a violation but does constitute a plea of nolo contendere. The Occupations Code §301.657(b) provides that the Board may treat a person's acceptance of corrective action as an admission of a violation if the Board imposes a sanction on the person for a subsequent violation of Chapter 301 or a rule or order adopted under Chapter 301. The Occupations Code §301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (1) perform its duties and conduct proceedings before the Board; (2) regulate the practice of professional nursing and vocational nursing; (3) establish standards of professional conduct for license holders Chapter 301; and (4) determine whether an act constitutes the practice of professional nursing or vocational nursing.

The following statutes are affected by this proposal: Section 213.32 - Occupations Code §§301.453, 301.4531, 301.466(a) and (b), 301.501, 301.502, 301.651 - 301.657, and 301.151.

§213.32. *Corrective Action Proceedings and Schedule of Administrative Fines [Fine(s)].*

A corrective action may be imposed by the Board as specified in the following circumstances.

(1) For purposes of this section only, corrective action has the meaning assigned by the Occupations Code §301.651. A corrective action imposed under this section is not a disciplinary action under the Occupations Code Chapter 301, Subchapter J.

(2) Pursuant to the Occupations Code §301.652, the Board may impose a corrective action for the first occurrence of each of the following violations:

(A) practice on a delinquent license for more than six months but less than one year;

(B) failure to comply with continuing competency requirements;

(C) failure to assure licensure/credentials of personnel for whom the nurse is administratively responsible;

(D) failure to provide employers, potential employers, or the Board with complete and accurate answers to either oral or written questions on subject matters including, but not limited to: employment history, licensure history, and criminal history;

(E) failure to comply with Board requirements for change of name/address; and

(F) failure to develop, maintain, and implement a peer review plan according to statutory peer review requirements.

(3) An individual will not be eligible for a corrective action if the individual has committed more than one of the violations listed in paragraph (2) of this section. If a fine is imposed by the Board as part of a corrective action under paragraph (2) of this section, the amount of the fine shall be \$500.

(4) The opportunity to enter into an agreed corrective action order is at the sole discretion of the Executive Director and is not available as a result of a contested case proceeding conducted pursuant to the Government Code Chapter 2001. [In disciplinary matters, the Board may assess a monetary penalty or fine in the circumstances and amounts as described.]

(5) [(1)] A fine, [The following violations may be appropriate for disposition by fine,] with or without remedial education [educational] stipulations, may be imposed in a disciplinary matter for the following violations in the following amounts:

(A) practice on a delinquent license for more than six months but less than two years:

- (i) first occurrence: \$250;
- (ii) subsequent occurrence: \$500;

(B) practice on a delinquent license for two to four years:

- (i) first occurrence: \$500;
- (ii) subsequent occurrence: \$1,000;

(C) practice on a delinquent license more than four years: \$1,000 plus \$250 for each year over four years;

[(D)] aiding, abetting or permitting a nurse to practice on a delinquent license:

- [(i)] first occurrence: \$100 - \$500;
- [(ii)] subsequent occurrence: \$200 - \$1,000;

(D) [(E)] failure to comply with continuing competency [CE] requirements:

- (i) first occurrence: \$250 [\$100];
- (ii) subsequent occurrence: \$500 [\$250];

(E) [(F)] failure to comply with mandatory reporting requirements:

- (i) first occurrence: \$250 [\$100] - \$500;
- (ii) subsequent occurrence: \$500 [\$200] - \$1,000;

(F) [(G)] failure to assure licensure/credentials of personnel for whom the nurse is administratively responsible:

- (i) first occurrence: \$250 [\$100] - \$500;
- (ii) subsequent occurrence: \$500 [\$200] - \$1,000;

(G) [(H)] failure to provide employers, potential employers, or the Board with complete and accurate answers to either oral or written questions on subject matters including but not limited to: employment history, licensure history, criminal history:

- (i) first occurrence: \$250 [\$200] - \$800;
- (ii) second occurrence: \$500 - \$1000;

(H) [(I)] failure to report unauthorized practice:

- (i) first occurrence: \$250 [\$100] - \$500;
- (ii) subsequent occurrence: \$500 [\$200] - \$1,000;

(I) [(J)] failure to comply with Board requirements for change of name/address:

- (i) first occurrence: \$250 [\$100];
- (ii) subsequent occurrence: \$300 [\$150];

(J) [(K)] failure to develop, maintain and implement a peer review plan according to statutory peer review requirements:

- (i) first occurrence: \$250 [\$100] - \$1,000;
- (ii) subsequent occurrence: \$500 - \$1,000;

(K) [(L)] failure to file, or cause to be filed, complete, accurate and timely reports required by Board order: \$250 for first occurrence;

- [(i)] first occurrence: \$100;
- [(ii)] subsequent occurrence: \$250;

(L) [(M)] failure to make complete and timely compliance with the terms of any stipulation contained in a Board order: \$250 for first occurrence;

- [(i)] first occurrence: \$100;
- [(ii)] subsequent occurrence: \$250;

(M) [(N)] failure to report patient abuse to the appropriate authority of the State of Texas, including but not limited to, providing inaccurate or incomplete information when requested from said authorities:

- (i) first occurrence: \$500;
- (ii) second occurrence: \$1000 - \$5000; and

(N) [(O)] other non-compliance with the NPA, Board rules or orders which does not involve fraud, deceit, dishonesty, intentional disregard of the NPA, Board rules, Board orders, harm or substantial risk of harm to patients, clients or the public:

- (i) first occurrence: \$250 [\$100] - \$500;
- (ii) subsequent occurrence: \$500 [\$200] - \$1,000.

(6) [(2)] The following violations may be appropriate for disposition by fine in conjunction with one or more of the penalties/sanctions contained elsewhere [listed] in the Board's [these] rules:

(A) violations other than those listed in paragraphs (2) and (5) [paragraph (1)(A) - (N)] of this section:

- (i) first occurrence: \$250 [\$100] - \$1,000;
- (ii) subsequent occurrence: \$500 [\$200] - \$1,000;

and

(B) a cluster of violations listed in paragraphs (2) and (5) [(paragraph (1)(A) - (O))] of this section: \$250 [\$100] - \$5,000.

[(3) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty or fine.]

(7) [(4)] The executive director is authorized to dispose of violations listed in paragraphs (2) and (5) [paragraph (1)(A) - (O)] of this section[, by fine, or by a combination of fine and stipulations for education, which shall be effective] without ratification by the Board. The executive director shall report such cases to the Board at its regular meetings.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 24, 2009.

TRD-200903712

James W. Johnston

General Counsel

Texas Board of Nursing

Earliest possible date of adoption: October 4, 2009

For further information, please call: (512) 305-6811



## PART 14. TEXAS OPTOMETRY BOARD

### CHAPTER 273. GENERAL RULES

#### 22 TAC §§273.4, 273.7, 273.13

The Texas Optometry Board proposes amendments to §273.4, concerning fees, and §273.7, concerning the Retired License for volunteer charity care, and proposes new §273.13, concerning the authority of a community health center to contract with or employ optometrists and therapeutic optometrists.

The amendments to §273.4 raise the license renewal fees by \$29.00 in order to provide funding for increased expenses to operate the agency. Amendments also change the late renewal fee for renewals one to ninety days late, and for renewals 90 to 365 days late, and the late fee for failure to timely obtain continuing education, since these fees are based on the license renewal fee. The amendments also change the fee for the Retired License to the amount of the inactive renewal fee as required by §351.265 of the Optometry Act and in conformance with Texas Occupations Code §112.051. A new subsection sets an application fee of \$25.00 for former licensees applying for a Retired License.

The amendments to §273.7 set out the requirements for implementing House Bill 675, 81st Legislature, Regular Session, including application requirements for a Retired License to practice volunteer charity care, definition of charity care, and requirements to reinstate a license. New rule §273.13 implements the provisions of Senate Bill 1476, 81st Legislature, Regular Session.

Chris Kloeris, executive director of the Texas Optometry Board, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for local government as a result of enforcing or administering the amendments. For state government, there will be increased revenue of \$100,837.00 (including the amount dedicated to the University of Houston) of the first year of the biennium and each year thereafter that the amended license fee amounts are in effect. Increased revenue of \$6,576 (including the amount dedicated to the University of Houston) each year will be realized due to the modification of the late renewal penalty as required by statute. Increased revenue of less than \$100 of the first year of the biennium and each year thereafter that fee amounts are in effect is expected from the amendment to increase the late continuing education penalty. The agency plans to reduce the fees for fiscal year 2011. Increased revenue from the fee for the Retired License of \$500.00 is forecast for the first year of the biennium and \$1,000 for each year thereafter that the amended license fee amounts are in effect. The application fee is forecast to realize increased revenue of less than \$100 for each year.

Mr. Kloeris also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be that

agency is funded for the replacement of an obsolete computer system, the establishment of a program to assist licensees with addictions and mental health issues, and increased travel costs. The amendments also allow the agency to implement House Bill 675, 81st Legislature, Regular Session. The public benefit anticipated for amendments to §273.7 is that additional licensees will be able to practice volunteer charity care. The public benefit anticipated from new rule §273.13 is that community health centers will be able to employ optometrists along with other health care providers.

#### Economic Impact Statement and Regulatory Flexibility Analysis

The Board licenses approximately 3,700 optometrists and therapeutic optometrists. Approximately 2,900 have active licenses. A significant majority of licensees own or work in one or more of the 1,000 to 3,000 optometric practices which meet the definition of a small business. Some of these practices meet the definition of a micro business. The Board does not license these practices. The economic costs for persons who are required to comply with the amendments, will be a \$29.00 license renewal fee increase for each license holder. The fee is imposed on individual professionals and therefore no disparate effect is foreseen on small or micro-businesses. The late renewal fee is only imposed on individuals failing to timely renew, and the late continuing education penalty is only imposed on individuals failing to timely obtain continuing education. The Retired License fee is also imposed directly on individual licensees and is less than the currently required active license fee. The application fee for reinstatement of an active license by a holder of a retired license is also imposed directly on individual licensees. Comments are solicited if a disparate cost of compliance can be established. No economic costs are required for most persons complying with the amendments to §273.7 since the majority of applicants for a Retired License will be currently licensed by the agency, and no application fees are required and continuing education requirements are less than that required of current licensees. Applicants whose license has expired one year or more and apply for a Retired License will also not be required to take more continuing education than a current licensee. The applicants whose licenses expired five years or more before applying for a therapeutic Retired License will be required to travel to Houston or Austin to take the Jurisprudence Exam. Depending on the distance from Austin or Houston, travel costs will range from less than \$25.00 to \$600.00. The Jurisprudence Exam is essential in that it measures whether an applicant who may not have been licensed for over five years has current knowledge of the agency's rules regarding the administration and prescribing of prescription medications. The agency gives the exam in Austin or Houston to insure the efficacy of the exam. The exam costs are imposed on individuals. No disparate effect is foreseen on small or micro-businesses. It is anticipated that there will be no economic costs, other than nominal copying and postage costs to submit the required application for community health centers who wish to comply with new rule §273.13.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.152, 351.304, 351.308 and 351.265; Texas Occupations Code §112.051; House Bill 675, Senate Bill 1476, and Senate Bill 1, 81st Legis-

lature, Regular Session. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession; §351.152 as granting the Board the authority to establish by rule reasonable and necessary fees to cover the costs of administering the act; §351.304 as setting the requirements for late renewal fees, and §351.308 as setting the fee for delayed continuing education compliance. Section 351.265 and House Bill 675 create a new category of Retired License and §112.051 sets out similar requirements for the license. Senate Bill 1476, authorizes the Board to certify community health center to contract with or employ optometrists and therapeutic optometrists. Senate Bill 1 authorizes the funding mechanism for the agency.

*§273.4. Fees (Not Refundable).*

(a) - (f) (No change.)

(g) License Renewal ~~\$216.00~~ ~~[\$187.00]~~ plus \$200.00 additional fee required by §351.153 of the Act, and plus \$1.00 fee required by House Bill 2985, 78th Legislature. The inactive licensee fee does not include \$200.00 additional fee. Total fees: ~~\$417.00~~ ~~[\$388.00]~~ active renewal; ~~\$217.00~~ ~~[\$188.00]~~ inactive renewal.

(h) License fee for late renewal, one to 90 days late: ~~\$324.00~~ ~~[\$280.50]~~ plus \$200.00 additional fee required by §351.153 of the Act, and plus \$1.00 fee required by House Bill 2985, 78th Legislature. The inactive licensee fee does not include \$200.00 additional fee. Total late license fees: ~~\$525.00~~ ~~[\$481.50]~~ active renewal; ~~\$325.00~~ ~~[\$281.50]~~ inactive renewal.

(i) License fee for late renewal, 90 days to one year late: ~~\$432.00~~ ~~[\$374.00]~~ plus \$200.00 additional fee required by §351.153 of the Act, and plus \$1.00 fee required by House Bill 2985, 78th Legislature. The inactive licensee fee does not include \$200.00 additional fee. Total late license fees: ~~\$633.00~~ ~~[\$575.00]~~ active renewal; ~~\$433.00~~ ~~[\$375.00]~~ inactive renewal.

(j) Late fees (for all renewals with delayed continuing education) ~~\$216.00~~ ~~[\$187.00]~~.

(k) - (n) (No change.)

(o) Retired License. ~~\$216.00~~ ~~[\$25.00 plus \$200.00 additional fee required by Section 351.153 of the Act, and]~~ plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total fee: ~~\$217.00~~ ~~[\$226.00]~~.

(p) Retired License to Active License Application Fee. For individuals holding Retired License making application for active license. ~~\$25.00.~~

*§273.7. Inactive Licenses and Retired License for Volunteer Charity Care.*

(a) - (c) (No change.)

(d) Retired License. The Board may issue a Retired License to optometrists or therapeutic optometrists [~~Occupations Code Section 112.051 requires the Board to adopt rules providing for reduced fees and continuing education requirements for a retired health care practitioner~~] whose only practice is volunteer charity care pursuant to subsections (d) - (k) of this section.

(e) Application. An applicant holding a current license may apply for a Retired License by submitting to the Board a completed application with the license fee required by §273.4 of this title (relating to Fees (Not Refundable) [for a Retired License must complete and submit to the Board the Retired License Application]. There is no charge

to apply. A Retired License will not be issued to applicants subject to current or pending disciplinary action. In determining whether to grant retired status, the Board shall consider the age, years of practice, and status of the license holder at the time of the application. Applicants must supply proof that the continuing education requirements for a Retired License have been met in §275.1(g)(1) of this title (relating to General Requirements)[- See §275.1 of this title] (Rule 275.1).

(f) Application by Expired Licensee. A former licensee whose license has expired for one year or more may apply for a Retired License by submitting to the Board a completed application with the license fee required by §273.4 of this title. There is no charge to apply. A Retired License will not be issued to applicants subject to current or pending disciplinary action. Applicants must supply proof of having met the continuing education requirements of §275.1(g)(2) of this title. An applicant for a therapeutic Retired License must have been licensed by the Board as a therapeutic optometrist. An applicant for a therapeutic Retired License whose license has been expired for five years or more must supply proof of a passing score on the jurisprudence examination taken within the one year period prior to the submission of the application. In determining whether to grant retired status, the Board shall consider the age, years of practice, and status of the license holder at the time of the application.

(g) [(f)] Scope of License. The holder of a Retired License may practice optometry or therapeutic optometry in the same manner as an active licensee of the Board, subject to the restrictions contained in this section. A holder of a Retired License may only practice optometry or therapeutic optometry when such practice is without compensation or expectation of compensation (except for the reimbursement of travel and supply expenses) as a direct service volunteer of a charitable organization.

(h) [(g)] Charitable Organization. A charitable organization [is defined in Section 84.003 of the Texas Civil Practice and Remedies Code and] includes any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization (excluding fraternities, sororities, and secret societies), or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community, including these types of organizations with a §501(c)(3) or (4) [Section 501(e)(3) or (4)] exemption from federal income tax, some chambers of commerce, and volunteer centers certified by the Department of Public Safety.

(i) [(h)] Renewal. A Retired License expires on the same date as a regular license. Prior to renewing the license, the licensee must supply proof that the continuing education requirements for a Retired License have been met. The license renewal fee is set in §273.4 of this title.

(j) [(i)] Penalty. The holder of a Retired License shall not receive compensation for the practice of optometry. To do so constitutes the practice of optometry without a license and subjects the optometrist or therapeutic optometrist to the penalties imposed for this violation.

(k) Reinstatement of an Active License by a Holder of a Retired License. The Board may reinstate an active license to applicants who hold a Retired License pursuant to the requirements of this subsection. Applicants may apply for reinstatement by submitting to the Board a completed application with the application fee required by §273.4 of this title. Applicants must supply proof that the continuing education requirements for an active license have been met. If the Board approves the application to reinstate the active license, the Board may issue the license once the requirements of subsection (b)(1)(C) and (D) of this section have been met. An active license will not be issued

to a holder of a Retired License who applied for that license under subsection (f) of this section.

§273.13. Contract or Employment with Community Health Centers.

(a) Definitions.

(1) Community Health Center. A nonprofit corporation under the Texas Non-Profit Corporation Act and §501(c)(3), Internal Revenue Code of 1986 that is organized and operated as either:

(A) a migrant, community, or homeless health center under the authority of and in compliance with 42 U.S.C. §254b or §254c; or

(B) a federally qualified health center under 42 U.S.C. §1396d(1)(2)(B).

(2) Application for Certification by Board. A completed application contains:

(A) the completed application form provided by the Board,

(B) the certificate of incorporation under the Texas Non-Profit Corporation Act;

(C) documentation that the organization is tax exempt under §501(c)(3) of the Internal Revenue Code and,

(D) documentation that the organization is organized and operated as a migrant, community, or homeless health center under the authority of and in compliance with 42 U.S.C. §254b or §254c, or is a federally qualified health center under 42 U.S.C. §1396(d)(1)(2)(B).

(3) Certified Community Health Center. A community health center certified by the Board as making application and meeting the requirements of this section and therefore authorized to employ an optometrist or therapeutic optometrist. A certified community health center shall annually report to the Board the status of the community health center under paragraph (1) of this subsection, and shall notify the Board immediately if the health center no longer meets the requirements of paragraph (1) of this subsection. The Board shall remove the certification granted if the community health center does not meet the requirements of paragraph (1) of this subsection.

(b) Section 351.367 of the Optometry Act authorizes an optometrist or therapeutic optometrist to contract with or be employed by a certified community health center to practice optometry and therapeutic optometry.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 20, 2009.

TRD-200903661

Chris Kloeris

Executive Director

Texas Optometry Board

Earliest possible date of adoption: October 4, 2009

For further information, please call: (512) 305-8502



## CHAPTER 275. CONTINUING EDUCATION

### 22 TAC §275.1

The Texas Optometry Board proposes amendments to §275.1, concerning continuing education requirements for the Retired License for volunteer charity care. The amendments include the

requirements for persons authorized by House Bill 675, 81st Legislature, Regular Session, to apply for a Retired License.

Chris Kloeris, executive director of the Texas Optometry Board, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the amendments.

Mr. Kloeris also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated is that licensees practicing volunteer charity care will possess current knowledge of optometry.

#### Economic Impact Statement and Regulatory Flexibility Analysis

The Board licenses approximately 3,600 optometrists and therapeutic optometrists. A significant majority of licensees own or work in one or more of the 1,000 to 3,000 optometric practices which meet the definition of a small business. Some of these practices meet the definition of a micro business. The Board does not license these practices. There will be no economic costs for persons who are required to comply with the amendments, since the amendments require a current or former license applying for a Retired License to obtain less than or the same amount of continuing education that a licensee practicing optometry is currently required to obtain, and require holders of Retired Licenses to obtain the same professional responsibility course as regular licensees. No disparate effect is foreseen on small or micro-businesses.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The amendments are proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.358, Texas Occupations Code §112.051; and House Bill 675, 81st Legislature, Regular Session. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession, and §351.358 as setting the continuing education requirements for licensees. House Bill 675, 81st Legislature, Regular Session creates a new category of Retired License and §112.051 sets out similar requirements for the license.

#### §275.1. General Requirements.

(a) - (f) (No change.)

#### (g) Retired License Continuing Education.

(1) An applicant with a current license applying for [or a licensee renewing] the Retired License shall obtain 8 hours of Board [board] approved continuing education during the calendar year preceding the date of application [prior to receiving or renewing the license]. All of the hours may be obtained on the Internet or by correspondence. At least one half of these hours must be diagnostic/therapeutic as approved by the Board and one hour must be professional responsibility [board].

(2) An applicant whose license has expired for one year or more shall obtain 16 hours of Board approved continuing education during the calendar year preceding the date of application. All of the hours may be obtained on the Internet or by correspondence. At least 8

of these hours must be diagnostic/therapeutic as approved by the Board and one hour must be professional responsibility.

(3) The holder of a retired license shall obtain 8 hours of Board approved continuing education during the calendar year prior to renewing the license. All of the hours may be obtained on the Internet or by correspondence. At least one half of these hours must be diagnostic/therapeutic as approved by the Board and one hour must be professional responsibility.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 20, 2009.

TRD-200903663

Chris Kloeris

Executive Director

Texas Optometry Board

Earliest possible date of adoption: October 4, 2009

For further information, please call: (512) 305-8502



## PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

### CHAPTER 663. STANDARDS OF RESPONSIBILITY AND RULES OF CONDUCT SUBCHAPTER B. PROFESSIONAL AND TECHNICAL STANDARDS

#### 22 TAC §663.17

The Texas Board of Professional Land Surveying (TBPLS) proposes an amendment to §663.17, concerning Monumentation.

The amendment will make the monumentation of boundary lines clearer and also require that land surveyors set reference monuments when it is not practical to set a boundary marker.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this amendment.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it make the requirements of monumentation clearer.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, Austin, TX 78753. Comments may also be faxed to Ms. Smith at the Board at (512) 239-5253 or may be sent electronically to [ssmith@txls.state.tx.us](mailto:ssmith@txls.state.tx.us). All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The proposed amendment implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

#### §663.17. Monumentation.

(a) All monuments set by registered professional land surveyors shall be set at sufficient depth to retain a stable and distinctive location and be of sufficient size to withstand the deteriorating forces of nature and shall be of such material that in the land surveyor's judgment will best achieve this goal.

(b) When delineating a ~~[property or]~~ boundary line as an integral portion of a survey (survey being defined in the Act, §1071.002(6) or (8)), the land surveyor shall set, or leave as found, ~~[sufficient,]~~ stable and reasonably permanent survey markers to represent each ~~[or reference the property or]~~ boundary corner ~~[corners]~~, angle point ~~[points]~~, or point ~~[and points]~~ of curvature or tangency. When the land surveyor deems it is impossible or impracticable to set a boundary marker on a corner, the land surveyor shall set a reference monument and identify it as such. If more than one reference monument is set each monument shall be uniquely identified.

(1) All survey markers and reference monuments shall be shown and described with sufficient evidence of the location of such markers on the land surveyors' plat. If the land surveyor ~~prepares~~ prepares a written description of the surveyed premise, he/she shall include in that written description:

(A) reference to and a description of the survey markers or reference monuments as shown on the plat; and

(B) his/her ~~[the]~~ seal and signature as ~~[of]~~ a registered or licensed land surveyor.

(2) In addition, the land surveyor may furnish a non-signed ~~[an]~~ electronic copy of a written description or plat provided that the text or data is verbatim to that on the ~~[certified]~~ document retained in the land surveyor's file.

(c) All metes and bounds descriptions ~~[description]~~ prepared for easements shall be tied to physical monuments of record related to the boundary of the affected tract.

(d) Where practical, all monuments set by Professional Land Surveyors to delineate, reference, or witness a boundary corner shall be marked in a way that is traceable to the responsible registrant or associated employer.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 18, 2009.

TRD-200903631

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: October 4, 2009

For further information, please call: (512) 239-5263



## CHAPTER 664. CONTINUING EDUCATION

## 22 TAC §§664.2 - 664.5

The Texas Board of Professional Land Surveying (TBPLS) proposes an amendment to §664.2, concerning deadlines for fulfilling the continuing education requirement for land surveyors license renewal, §664.3, concerning the numerical requirements for continuing education, §664.4, concerning types of acceptable continuing education, and §664.5, concerning the procedure for course approval.

The amendments will clarify board policy regarding deadlines for fulfilling the continuing education requirements, the number of hours of continuing education that a land surveyor must complete in order to renew his/her license, update the accredited institutions acceptable to the board, and how the board will approve hours for continuing education credit.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this amendment.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will clarify the continuing education requirement for license renewal.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the proposed amendments may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, Austin, TX 78753. Comments may also be faxed to Ms. Smith at the Board at (512) 239-5253 or may be sent electronically to [ssmith@txls.state.tx.us](mailto:ssmith@txls.state.tx.us). All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendments are proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The proposed amendments implement the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

### §664.2. *Deadlines.*

[(a)] Continuing education requirements for renewal shall be fulfilled during annual periods beginning on the first day of a registrant's renewal year and ending on the last day of the registrant's renewal year.

[(b)] The initial annual period for each registrant shall include the annual year period described in this section plus the period of time from the issuance of the registrant's first certificate to the first renewal date, or from the effective date of this section to the next renewal date, or whichever occurs last.]

### §664.3. *Numerical Requirements for Continuing Education.*

A registrant, to be eligible for renewal of the certificate of registration, must complete eight hours[; a calendar day;] of board approved professional development activities [courses or programs] in any annual period.

### §664.4. *Types of Acceptable Continuing Education.*

Continuing education courses and professional development undertaken by a registrant shall be acceptable if the activity is approved by the board and falls in one or more of the following categories:

(1) (No change.)

(2) completion of undergraduate or graduate academic courses with a passing grade in areas supporting development of skill and competence in professional land surveying at an institution which is accredited by ABET, Southern Association of Colleges and Schools or an equivalent [or the Association of Southern Colleges and Universities];

(3) - (8) (No change.)

### §664.5. *Procedure for Course Approval [of Programs].*

Individuals and organizations may initiate requests for board approval and credits of specific programs for continuing education credit before these programs occur. Approval shall be given only for the specific program described in the request.

(1) An approved sponsor is responsible for providing or arranging information necessary for verification of attendance at continuing education activities. Information provided must include the approved course number and date. [The registrant is ultimately responsible for providing, or arranging for sponsors to provide, the information necessary for the board to make a determination of the applicability of the program to the continuing education requirements.]

(2) The registrant is responsible for compiling information necessary for the board to make a determination of the applicability of programs not previously approved by the board. [Sponsors may initiate their own requests and may, when approval is obtained in advance, announce such approval in connection with the continuing education experience utilizing statements prescribed by the board.]

(3) Sponsors may initiate their own requests and may, when approval is obtained in advance, announce such approval in connection with the continuing education experience utilizing statements prescribed by the board. [Programs preapproved by registration boards of other jurisdictions will be accepted by this board at the same continuing education unit value assigned by the other board unless such program has been specifically disallowed by this board.]

(4) Programs pre-approved by registration boards of other jurisdictions will be accepted by this board at the same continuing education unit value assigned by the other board unless such program has been specifically disallowed by this board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 18, 2009.

TRD-200903633

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Proposed date of adoption: October 4, 2009

For further information, please call: (512) 239-5263



## 22 TAC §§664.6 - 664.11, 664.13

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Professional Land Surveying or in the Texas Register



office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Board of Professional Land Surveying (TBPLS) proposes to repeal §664.6, concerning Criteria for Approval of Continuing Education Activities, §664.7, concerning Determination of Credit Units, §664.8, concerning Reporting of Continuing Education, §664.9, concerning Activities Unacceptable as Continuing Education, §664.10, concerning Acceptable Carry-over Continuing Education Units, §664.11, concerning Failure to Complete Required Continuing Education and §664.13, concerning Exemptions.

The repeal of these rules will remove existing language while at the same time a new rule will be proposed to replace the repealed rule. The reason for the repeal is because the board has voted to change the way continuing education will be reported. Each land surveyor will now keep record of the continuing education they have completed and at the time of license renewal will certify that they have completed the continuing education requirement for license renewal. This certification will be subject to audit. These rules will be repealed effective December 31, 2009 with the new rules being effective January 1, 2010.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this amendment.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will only change the way continuing education is reported.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the proposed repeals may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, Austin, TX 78753. Comments may also be faxed to Ms. Smith at the Board at (512) 239-5253 or may be sent electronically to [ssmith@txls.state.tx.us](mailto:ssmith@txls.state.tx.us). All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The repeals are proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The proposed repeals implement the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

*§664.6. Criteria for Approval of Continuing Education Activities.*

*§664.7. Determination of Credit Units.*

*§664.8. Reporting of Continuing Education.*

*§664.9. Activities Unacceptable as Continuing Education.*

*§664.10. Acceptable Carry-over Continuing Education Units.*

*§664.11. Failure to Complete Required Continuing Education.*

*§664.13. Exemptions.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 18, 2009.

TRD-200903632

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Proposed date of adoption: October 4, 2009

For further information, please call: (512) 239-5263

## 22 TAC §§664.6 - 664.10

The Texas Board of Professional Land Surveying (TBPLS) proposes new §664.6, concerning reporting and record keeping of continuing education records, new §664.7, concerning the review and audit process for continuing education, new §664.8, concerning the failure to complete the required continuing education, new §664.9, concerning acceptable carry-over of continuing education units and new §664.10, concerning exemption from completing continuing education. Section 664.10 was previously §664.13 but is being renumbered due to other changes in continuing education rules.

The new sections will notify the registrant of their need to keep records of their required continuing education, the review and audit process for registrants who indicated they had completed their continuing education prior to their license renewal, the penalties for failure to complete the required continuing education, the maximum number of hours available for carry-over and why a registrant can be exempt from obtaining continuing education. These changes will be effective January 1, 2010.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this amendment.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will clarify how the board will require the registrant to keep records of their continuing education, the review and audit process, penalties for failure to complete continuing education, carry-over hours and exemptions from completing continuing education.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the proposed new sections may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, Austin, TX 78753. Comments may also be faxed to Ms. Smith at the Board at (512) 239-5253 or may be sent electronically to [ssmith@txls.state.tx.us](mailto:ssmith@txls.state.tx.us). All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The new sections are proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The new sections implement the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

§664.6. Reporting and Record Keeping.

The registrant shall complete the application for renewal of a license with the required fee and declaration that he or she has obtained the required continuing education. Maintaining records to be used to support continuing education claimed in the event of an audit is the responsibility of the registrant.

§664.7. Review and Audit Process.

For each annual renewal period, the Board shall select, on a random basis, not less than five (5) percent of renewal applications for audit. The Board shall request each selected registrant to furnish a Continuing Education Log, on the form provided by the Board, chronicling the continuing education activities for the preceding year. The registrant must also furnish verification of attendance at the listed activities on the Board's Continuing Education Log. Upon receipt of the requested records, the Board may request the registrant to furnish further evidence necessary to satisfy the Board that the registrant has complied with the continuing education requirements of this rule. If, through a complaint process, a violation of the Board's Rules or the Act is found the registrant will be subject to an audit as described above.

§664.8. Failure to Complete Required Continuing Education.

Failure to complete the continuing education requirements is a violation of Board rules and is subject to administrative penalties. If, after an audit is performed, it is determined that a registrant failed to complete all requirements for renewal of the certification of registration the registrant's license is suspended immediately upon the determination. The registrant's license shall be renewed upon submission of the required and approved continuing education report, payment of required late renewal fees, completion of required affidavits, and payment of any additional administrative penalties. The registrant will have 90 days after notification of license suspension to complete the required continuing education to avoid forfeiture of license. The ending dates of a registrant's subsequent annual continuing education cycles under §664.2 of this title (relating to Deadlines) are not changed or extended when a registrant did not meet continuing education requirements in any previous period(s).

§664.9. Acceptable Carry-over Continuing Education Units.

If a registrant exceeds the annual requirement in any renewal period, a maximum of 8 continuing education units may be carried forward into the subsequent renewal period.

§664.10. Exemptions.

A registrant may be exempt from the professional development educational requirements for one of the following reasons:

- (1) New registrant by way of examination shall be exempt for their first renewal period.
- (2) A license holder serving on active duty and deployed outside Texas in or for the military service of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year.
- (3) Registrants who list their status as "Inactive".

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 18, 2009.  
TRD-200903634

Sandy Smith  
Executive Director  
Texas Board of Professional Land Surveying  
Proposed date of adoption: October 4, 2009  
For further information, please call: (512) 239-5263

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**TITLE 28. INSURANCE**

**PART 1. TEXAS DEPARTMENT OF INSURANCE**

**CHAPTER 21. TRADE PRACTICES  
SUBCHAPTER NN. NONINSURANCE  
BENEFITS AND FEATURES**

**28 TAC §§21.4801 - 21.4807**

The Texas Department of Insurance proposes new Subchapter NN, §§21.4801 - 21.4807, concerning requirements applicable to noninsurance benefits that are provided or disclosed as part of an insurance policy, contract or certificate of insurance and that are reasonably related to the type of policy, contract or certificate being issued. The proposed new sections are necessary to implement House Bill (HB) 1847, 80th Legislature, Regular Session, which amended the Insurance Code Chapter 1701 by adding §1701.061. Section 1701.061 provides for the offering of noninsurance benefits and requires full description and disclosure of the benefit to individuals to whom the benefit is to be offered, as well as explanation of events and/or conditions that will trigger termination of the benefit. Section 1701.061(f) authorizes the Commissioner to adopt rules to implement §1701.061, including rules to (i) determine which noninsurance benefits are reasonably related to the types of insurance subject to this chapter; (ii) ensure that noninsurance benefits included as part of a policy or certificate are not unfairly deceptive or do not otherwise constitute a prohibited inducement; and (iii) address application of other chapters of the Insurance Code to noninsurance benefits provided as part of a policy or certificate, including Chapters 82 - 84, 222, 257, 463, 541 - 544, 1501, and 1506. These proposed new sections implement §1701.061(f)(1) - (3).

Proposed new §21.4801 addresses the applicability and scope of the proposed new sections, providing that the subchapter applies to any insurer that provides or discloses a noninsurance benefit as part of a life insurance policy or certificate, annuity contract or certificate, or an accident or health insurance policy, contract or certificate.

Proposed new §21.4802 provides a definition for a noninsurance benefit, stating that it has the meaning provided in the Insurance Code §1701.061(a), and is a good or service provided or disclosed as part of a policy or certificate of insurance that is reasonably related to the type of policy or certificate being issued.

Proposed new §21.4803 states that the purpose of the proposed new sections is to provide the essential standards to be met in satisfaction of requirements applicable to noninsurance benefits intended to be offered as part of a policy, contract or certificate of insurance under the Insurance Code §1701.061.

Proposed new §21.4804 sets out provisions addressing the reasonable relation between noninsurance benefits and the insurance policy, contract or certificate with which they are associated.

Proposed new §21.4805 sets out certain disclosure requirements for form filings which include noninsurance benefits, including (i) a description of the noninsurance benefit; (ii) a notice fully disclosing the noninsurance benefit to the policyholder, contract holder or certificate holder; and (iii) a statement explaining any condition on which termination of the noninsurance benefit will occur.

Proposed new §21.4806 sets out additional provisions applicable to noninsurance benefits provided or disclosed as part of a policy, contract or certificate, including (i) a prohibition against provisions that are unfairly deceptive; (ii) the applicability of disciplinary, enforcement and administrative penalty provisions of the Insurance Code Chapters 82 - 84; and (iii) the requirement that if a noninsurance benefit is to be available to in-force business, commitment documentation setting out such availability must be submitted with the form filing.

Proposed new §21.4807 addresses provisions applicable to noninsurance benefits composed of certain discount programs. The section contains provisions that recognize and assist in the transition of regulation of discount health care programs and discount health care program operators from the Texas Department of Licensing and Regulation to the Texas Department of Insurance, effective April 1, 2010, as provided in Sections 3 - 6 of House Bill (HB) 4341, 81st Legislature, Regular Session.

FISCAL NOTE. Katrina Daniel, Senior Associate Commissioner of Life, Health, and Licensing, has determined that for each year of the first five years the proposed new sections will be in effect there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Ms. Daniel also has determined that for each year of the first five years the proposed new sections are in effect, the public benefits anticipated as a result of the proposed new sections will be the provision of noninsurance benefits that are reasonably related to the insurance policy, contract or certificate with which they are associated; noninsurance benefit offerings which are sufficiently specific in description and disclosure to inform individuals to whom they are offered concerning the nature, character and scope of the noninsurance benefit; and an explanation of events and/or conditions that will trigger termination of the noninsurance benefit. Any costs to persons required to comply with these proposed new sections for each year of the first five years the proposed new sections would be in effect are the result of the enactment of HB 1847 and not the result of the adoption, enforcement, or administration of the proposed new sections. There is no anticipated difference in cost of compliance between small and large businesses.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In accordance with the Government Code §2006.002(c), the Department has determined that the proposed new sections concerning requirements applicable to noninsurance benefits that are provided or disclosed as part of an insurance policy, contract or certificate and that are reasonably related to the type of policy, contract or certificate being issued, will not have an adverse economic effect on small businesses or micro businesses that are required to comply with the proposal. The proposal does not impose any new requirements or costs that are in addition to those required under HB 1847 with which businesses, regardless of size, must comply. Therefore, any costs to persons required to comply with these proposed new sections are the result of the

enactment of HB 1847, and not the result of the adoption, enforcement, or administration of the proposed new sections. In accordance with the Government Code §2006.002(c), the Department has therefore determined that a regulatory flexibility analysis is not required because the proposal will not have an adverse impact on small or micro businesses.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on October 5, 2009 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Doug Danzeiser, Deputy Commissioner for Regulatory Matters, Life, Health and Licensing Division, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The new sections are proposed under the Insurance Code §1701.061 and §36.001. Section 1701.061 authorizes the Commissioner to adopt rules to implement the section, including rules to determine which noninsurance benefits are reasonably related to the types of insurance subject to Chapter 1701, relating to life, accident and health insurance Policy Forms, and to ensure that noninsurance benefits included as part of a policy, contract or certificate are not unfairly deceptive or do not otherwise constitute a prohibited inducement. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statute is affected by this proposal: Insurance Code Chapter 1701

§21.4801. Applicability and Scope.

In accordance with the Insurance Code §1701.061, this subchapter applies to any insurer that provides or discloses a noninsurance benefit as part of a life insurance policy or certificate, annuity contract or certificate, or an accident or health insurance policy, contract or certificate.

§21.4802. Definition of Noninsurance Benefit.

For purposes of this subchapter, the term "noninsurance benefit" has the same meaning as provided in the Insurance Code §1701.061(a).

§21.4803. Purpose.

The purpose of this subchapter is to provide the essential standards to be met in satisfaction of requirements applicable to noninsurance benefits intended to be offered as part of a policy, contract or certificate of insurance under the Insurance Code §1701.061.

§21.4804. Reasonable Relation to Policy, Contract or Certificate.

(a) In accordance with the Insurance Code §1701.061(a), any noninsurance benefit provided or disclosed as part of an insurance policy, contract or certificate of insurance must be reasonably related to the type of insurance policy, contract or certificate being issued.

(b) For purposes of this subchapter, the standard of "reasonable relation" takes into account the nature, character, purpose and scope of the insurance policy, contract or certificate with which the noninsurance benefit or feature is associated and to be offered. An example representing the existence of "reasonable relation" is a noninsurance benefit which, in form and application, is specifically related to the purpose and function of the underlying insurance policy, contract or certificate. Determination of "reasonable relation" will include examination of the degree to which the noninsurance benefit is related in its nature, character and purpose to that of the insurance policy, contract or certificate, including, as appropriate, the type and amount of benefit provided.

§21.4805. Disclosure Requirements for Form Filings that Include Noninsurance Benefits.

A policy, contract or certificate form filing that includes a noninsurance benefit shall also include the items set out in paragraphs (1) - (3) of this section:

(1) A description of the noninsurance benefit must be provided. The description must be sufficiently specific to provide information about the nature, character, purpose and scope of the benefit.

(2) A notice fully disclosing the noninsurance benefit to the policyholder, contract holder or certificate holder must be provided. Full disclosure includes the following:

(A) an explanation of how the noninsurance benefit may be obtained;

(B) a statement disclosing:

(i) whether acceptance or declination of the noninsurance benefit is optional to the policyholder, contract holder, certificate holder or, as applicable, other individual covered person;

(ii) the identifiable charge and amount, if any, for a noninsurance benefit that an individual covered person has the option to accept or decline;

(iii) the means by which the policyholder, contract holder, certificate holder or other person entitled to the benefit may obtain the benefit in the event the provider of the benefit, if other than the insurer, fails to provide or to continue to provide the benefit as set out in the policy, contract or certificate; and

(C) a statement providing information about the nature, character and purpose of the benefit, as well as any limitations associated with or applicable to the benefit.

(3) A statement explaining any condition on which termination of the noninsurance benefit will occur must be provided. The statement must include a reasonable notice and pre-termination period in circumstances where the condition triggering termination is the insurer's decision to discontinue offering or providing the benefit.

§21.4806. Additional Provisions Applicable to Noninsurance Benefits.

(a) A noninsurance benefit provided or disclosed as part of a policy, contract or certificate as set out in the Insurance Code §1701.061 may not contain any provision that is unfairly deceptive.

(b) A noninsurance benefit provided or disclosed as part of a policy, contract or certificate as set out in the Insurance Code §1701.061 is subject to the Insurance Code, Chapters 82 - 84.

(c) If a noninsurance benefit is to be available to in-force business, commitment documentation setting out such availability must be submitted with the form filing, specifically identifying all existing in-force business to which the noninsurance benefit is intended to be made available.

§21.4807. Noninsurance Benefits Composed of Certain Discount Programs.

(a) A noninsurance benefit may consist in whole or in part of discount cards for health care programs, vision care programs, dental care programs, prescriptions, physical fitness programs or facilities, or other similar programs.

(b) Noninsurance benefits which include, in whole or in part, discount health care programs and discount health care program operators are subject to the provisions in paragraphs (1) and (2) of this subsection.

(1) Noninsurance benefits offered or provided prior to April 1, 2010, which include, in whole or in part, discount health programs and discount health care program operators as defined in the Health and Safety Code §76.001, are subject to the provisions of the Health and Safety Code Chapter 76, any administrative rules adopted by the Texas Department of Licensing and Regulation implementing that chapter, and any orders entered by the Executive Director or Commission to administer and enforce the chapter.

(2) Noninsurance benefits offered or provided on or after April 1, 2010, which include, in whole or in part, discount health programs and discount health care program operators as defined in the Insurance Code §562.002 and §7001.001, are subject to the provisions of the Insurance Code Chapters 562 and 7001, any administrative rules adopted by the Commissioner of Insurance, and any orders entered by the commissioner to administer and enforce the chapters.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 24, 2009.

TRD-200903706

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: October 4, 2009

For further information, please call: (512) 463-6327

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**TITLE 34. PUBLIC FINANCE**

**PART 1. COMPTROLLER OF PUBLIC ACCOUNTS**

**CHAPTER 3. TAX ADMINISTRATION**

**SUBCHAPTER A. GENERAL RULES**

**34 TAC §3.9**

The Comptroller of Public Accounts proposes an amendment to §3.9, concerning electronic filing of returns and reports; electronic transfer of certain payments by certain taxpayers. This section is being amended to implement House Bill 2154, 81st Legislature, 2009. Effective September 1, 2009, Tax Code, §155.105, is amended to require wholesalers and distributors of tobacco products to include in the report they must file electronically with the comptroller the net weight as listed by the manufacturer for each unit of tobacco products other than cigars that is sold to retailers in this state. This requirement will apply to sales occurring on or after September 1, 2009. Subsection (c) is being amended to identify the new information that must be reflected in the reports and to clarify that the new information

that must be included applies only to tobacco products other than cigars that are sold to retailers on or after September 1, 2009.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by further streamlining the collection of state taxes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §155.105.

*§3.9. Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers.*

(a) - (b) (No change.)

(c) Electronic filing of reports by certain taxpayers.

(1) - (3) (No change.)

(4) Reports by wholesalers and distributors of cigars and tobacco products. Pursuant to Tax Code, §155.105, each wholesaler or distributor of cigars or tobacco products shall electronically file on or before the 25th day of each month a report of sales to retailers in this state.

(A) The report must contain the following information for the preceding calendar month's sales in relation to each retailer:

(i) - (iii) (No change.)

(iv) the monthly net sales made to the retailer, including the quantity and units of cigars and tobacco products sold to the retailer and the price charged to the retailer; ~~and~~ ]

(v) the net weight as listed by the manufacturer for each unit of tobacco products other than cigars; and

(vi) ~~[(v)]~~ any other information deemed necessary by the comptroller for the efficient administration of this subsection.

(B) This requirement applies to sales occurring on or after January 1, 2008, with the exception of subparagraph (A)(v) of this paragraph, which applies to sales occurring on or after September 1, 2009.

(C) (No change.)

(5) - (6) (No change.)

(d) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2009.

TRD-200903670

Martin Cherry

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: October 4, 2009

For further information, please call: (512) 475-0387

## PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

### CHAPTER 53. CERTIFICATION BY COMPANIES OFFERING QUALIFIED INVESTMENT PRODUCTS

#### 34 TAC §§53.1, 53.4 - 53.7, 53.11, 53.13, 53.16, 53.20

The Teacher Retirement System of Texas (TRS) proposes amended rules and a new rule for the certification of companies offering qualified investment products through what are commonly referred to as "403(b) plans," which educational institutions make available to their employees, and the registration of those products. House Bill 3480, enacted by the 81st Legislature, Regular Session (2009), amends Article 6228a-5 of Vernon's Texas Civil Statutes (V.T.C.S.) to provide the following: to establish qualifications for third-party administrators of 403(b) plans; to permit "platform" companies to certify with TRS and register investment products; to update the list of affected regulatory agencies; and to provide civil penalties for violations of Article 6228a-5, V.T.C.S. To implement the statutory amendments and to update obsolete statutory references, TRS proposes amendments to the following sections of its 403(b) rules: §53.1, relating to definitions; §53.4, relating to qualifications for certification by companies offering qualified investment products that are annuity contracts; §53.5, relating to qualifications for certification by companies offering qualified investment products other than annuity contracts; §53.6, relating to procedure for certification; §53.7, relating to certification fee; §53.11, relating to coordination with regulatory agencies; §53.13, relating to revocation of certification; and §53.16, relating to procedure for product registration. In addition, TRS proposes the following new rule: §53.20, relating to administrative service providers.

The proposed amendments to §53.1 amend the definitions of the words "company" and "contract" and add a definition for the term "platform company" to clarify the meaning of other rules containing those terms.

The proposed amendments to §53.4 update obsolete references to Insurance Code provisions that have been recodified.

The proposed amendments to §53.5 amend the qualifications necessary for certification of a company that offers qualified investment products other than annuity contracts, and to add qualifications necessary for certification applicable to platform companies.

The proposed amendments to §53.6 add the Texas Department of Banking and the Texas Attorney General to the list of agencies from which TRS may receive notice of a violation regarding a certified company or the company's products.

The proposed amendments to §53.7 specify that a company registering as both a company that offers qualified investment prod-

ucts other than annuity contracts and as a platform company shall pay one certification fee if the company files for its certifications at the same time but shall pay a separate certification fee for each certification filed separately.

The proposed amendments to §53.11 change the section heading to "Coordination with Regulatory and Enforcement Agencies" and add the Texas Department of Banking to the list of agencies to which TRS may refer complaints. The proposed amendments also add the Texas Department of Banking and the Texas Attorney General to the list of agencies from which TRS may receive notice of violations regarding a company or product.

The proposed amendments to §53.13 change the rule text to include a reference to the ability of TRS to "deny" a certification, in accordance with the recent statutory amendments. The proposed amendments also provide that suspension or revocation of certification of a company results in automatic suspension or revocation of registration of all the company's products, including those products registered by platform companies.

The proposed amendments to §53.16 permit platform companies to register qualified investment products, other than annuity contracts, issued and registered with TRS by another company. An additional amendment adds the Texas Department of Banking to the list of agencies from which TRS may receive notice of violations regarding a product.

Proposed new §53.20, titled "Administrative Service Providers," addresses a third-party administrator or service provider of an educational institution's 403(b) plan ("authorized administrative service provider"). Proposed subsection (a) of the new section sets forth the statutory qualifications for a person, other than an employee of an educational institution, that enters into or renews a contract with an educational institution on or after September 1, 2009 to be an authorized administrative service provider. Proposed subsection (b) sets forth the statutory requirement that, if an authorized administrative service provider who has entered into or renewed a contract with an educational institution on or after September 1, 2009 holds a meeting at the educational institution that is open to the institution's employees and at which qualified investment products will be marketed, then that service provider must provide representatives of certified companies that have previously agreed to comply with the institution's administrative requirements an opportunity to attend and market their qualified investment products at the meeting. Proposed subsection (c) sets forth a "safe harbor" for purposes of complying with subsection (b).

Ken Welch, TRS Chief Financial Officer, estimates that, for each year of the first five years that proposed amendments to §§53.1, 53.4 - 53.7, 53.11, 53.13, 53.16, and proposed new §53.20 will be in effect, there will be no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing or administering the amended rules. Any additional fees collected by TRS from certifying platform companies will offset the cost to TRS to administer the certification of such companies.

For each year of the first five years that the proposals will be in effect, Mr. Welch and Ronnie Jung, TRS Executive Director, have determined that the public benefit will be to provide employees of educational institutions offering 403(b) plans greater investment choices by permitting the certification of platform companies so they may offer registered products to the employees. Mr. Welch has also determined that the probable economic costs to entities or persons required to comply with the proposed rules is limited

to the fees charged for certification of companies and registration of products. There will be no effect on a local economy because of the proposals, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Moreover, there will be no direct adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposed amended rules, and therefore no statement about the effect of the proposals on small businesses is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice.

Statutory Authority: The amended and new rules are proposed under the following statutes: §6(a) of Article 6228a-5, Vernon's Texas Civil Statutes, which authorizes TRS, after consultation with the Texas Department of Insurance, the Texas Department of Banking, and the State Securities Board, to adopt rules to administer §§5, 6, 7, 8, 8A, 9A, 9B, 11, 12, and 13 of Article 6228a-5 relating to 403(b) company certification and product registration; and §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system.

Cross-Reference to Statute: The proposed amended and new rules do not affect any other statutes.

#### §53.1. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (4) (No change.)

(5) Company--An entity that offers ~~[and issues]~~ a qualified investment product, including a platform company. Except for a platform company, a company is the issuer of the qualified investment product and ~~[that]~~ has primary liability to the purchaser for performance of the obligations described in the product, contract, annuity contract or annuity certificate, or policy. A company offering qualified investment products that are not annuity contracts may be an affiliate by common ownership or control of the issuer of the qualified investment products. Generally, "company" does not include a reinsurance company ~~[companies]~~, a third party administrator ~~[administrators]~~, an entity ~~[entities]~~ performing duties under an administrative-services-only contract ~~[contracts]~~, and a representative ~~[representatives]~~ such as a licensed or registered agent ~~[agents]~~, broker ~~[brokers]~~, or investment advisor ~~[dealers]~~, unless such entity or its affiliate has ~~[entities have]~~ primary liability for performance of the obligations in the product or contract, or is a platform company.

(6) Contract--An agreement through which an employee purchases or enrolls in a qualified investment product, such as an insurance policy, an annuity contract, or an annuity certificate in a group annuity contract, or establishes a qualified investment product such as a custodial ~~[mutual fund]~~ account.

(7) - (9) (No change.)

(10) Platform company--A company that offers, under §403(b)(7) of the Internal Revenue Code of 1986, custodial accounts that hold only investment products issued and registered with TRS by a certified company.

(11) ~~[(+)]~~ Product--For the purpose of registration under this chapter, an annuity contract or custodial account, as defined under §403(b)(1) and §403(b)(7) of the Internal Revenue Code of 1986,

offered by a company that meets certification requirements and has certified to TRS in accordance with this chapter.

(12) [(44)] Qualified investment product--An annuity or investment that:

(A) meets the requirements of §403(b), Internal Revenue Code of 1986, and its subsequent amendments;

(B) complies with applicable federal insurance and securities laws and regulations; and

(C) complies with applicable state insurance and securities laws and rules.

(13) [(42)] Register--To submit all required information to the retirement system about products to be offered and meet all required qualifications for registration, as indicated by retirement system acceptance of a company's application to register to offer products and inclusion of the company's individual products on the system's Web site.

(14) [(43)] Representative--A person who sells or offers for sale an eligible qualified investment product on behalf of a certified company and who is licensed or registered if so required by law.

(15) [(44)] Retirement system or TRS--The Teacher Retirement System of Texas.

(16) [(45)] Salary reduction agreement--An agreement between an educational institution and an employee to reduce the employee's salary for the purpose of making direct contributions to or purchases of a qualified investment product.

(17) [(46)] Specialized department--One or more employees of a certified company or a company affiliated with the certified company dedicated to service of qualified investment products. If the certified company is authorized by the Texas Department of Insurance to issue annuity contracts in the State of Texas, the affiliated company must be part of an Insurance Holding Company System as described in §823.006, [defined in Article 21.49-1, §2(i)] Insurance Code.

*§53.4. Qualifications for Certification by Companies Offering Qualified Investment Products that are Annuity Contracts.*

(a) (No change.)

(b) A company may certify to TRS under this section if the company:

(1) - (2) (No change.)

(3) complies with the following standards:

(A) the company's actuarial opinions required under §425.054 or §802.002 [Articles 1.11 and 3.28], Insurance Code, have not been adverse or qualified in the five years preceding the date the certification is filed;

(B) the company is subject to the annual audit requirements of §401.004 [Article 1.15A], Insurance Code, and its most recent audit of financial strength conducted by an independent certified public accountant is timely filed and does not indicate the existence of any material adverse financial conditions in the company for the five years preceding the filing deadlines for the audit;

(C) the company has not been the subject of any of the following administrative or regulatory actions by the Texas Department of Insurance in the five years preceding the date the certification is filed:

(i) an order to rectify one or more conditions that render the continued operation of the company hazardous to policyholders, creditors, or the general public, pursuant to §404.003 [Article 1.32], Insurance Code;

(ii) a supervision, conservation, or forfeiture or cancellation of the charter [~~liquidation~~] of the company pursuant to Chapter 441 [Article 21.28-A], Insurance Code; or

(iii) a cease and desist order issued to the company pursuant to §83.051, Insurance Code, or its predecessor statute, Article 110A, Insurance Code.

(D) - (E) (No change.)

(F) the company has at least five years' experience in qualified investment products and has a specialized department dedicated to the service of qualified investment products. If a company is part of an Insurance Holding Company System as described in §823.006, [defined in Article 21.49-1, §2(i)] Insurance Code, and an affiliated company has met the five years experience requirement of this section, the company is deemed to have the same experience of its affiliate for purposes of this section; and,

(4) (No change.)

*§53.5. Qualifications for Certification by Companies Offering Qualified Investment Products Other than Annuity Contracts.*

(a) A company, other than a platform company, that offers qualified investment products other than annuity contracts may certify to TRS if it meets the following requirements: ~~[of this section.]~~

~~[(b) A company is eligible to certify if:]~~

(1) The company has at least five years' experience in qualified investment products and has a specialized department dedicated to service of qualified investment products.

(2) The company is qualified to do business in the State of Texas.

(3) The company, or an affiliate of the company related by common ownership or control, has a current issuer's authorization from the [is registered with the Securities and Exchange Commission, the] State Securities Board[, or other regulatory entity, if required by law].

(4) The company has not had a license or registration suspended or revoked by state or federal regulators within the five years preceding the date the certification is filed.

(5) The company manages assets of at least \$2 billion.

(6) The company does not assess fees, costs, or penalties that exceed the maximum amounts established by this chapter.

(7) The company's products comply with the registration requirements of Article 6228a-5, Texas Civil Statutes, and this chapter, as applicable.

(b) A platform company that offers qualified investment products other than annuity contracts may certify to TRS if it meets the following requirements:

(1) The company has at least five years' experience in qualified investment products.

(2) The company is qualified to do business in the State of Texas.

(3) The company is registered as a securities dealer or agent with the State Securities Board.

(4) The company has not had a license or registration suspended or revoked by state or federal regulators within the five years preceding the date the certification is filed.

(5) The company manages accounts of at least \$1 billion.

(6) The company does not assess fees, costs, or penalties that exceed the maximum amounts established by this chapter.

(7) The products offered by the company comply with the registration requirements of Article 6228a-5, Texas Civil Statutes, and this chapter, as applicable.

*§53.6. Procedure for Certification.*

(a) - (g) (No change.)

(h) TRS may deny a company's certification if the company does not provide all required information, if the information provided indicates the company does not meet the requirements for certification, or if TRS receives notification of a violation regarding the company or the company's product from [either] the Texas Department of Insurance, the Texas Department of Banking, the State Securities Board, the Texas Attorney General, or the company.

(i) - (j) (No change.)

*§53.7. Certification Fee.*

(a) - (b) (No change.)

(c) A company certifying under both §53.5(a) and (b) of this title (relating to Qualifications for Certification by Companies Offering Qualified Investment Products Other than Annuity Contracts) shall pay one certification fee if the company files its certifications under each subsection at the same time. If the certifications are filed separately, the company shall pay a separate certification fee for each separate certification.

(d) [(e)] If a company proposes to certify more than one legal entity, the company shall submit separate certifications and fees for each legal entity.

(e) [(d)] If TRS denies certification by a company, TRS shall retain the amount of the certification fee sufficient to reimburse TRS for its administrative costs associated with review of the certification. TRS may hold the entire certification fee for at least thirty business days after denial in order to determine whether the company will pursue certification.

(f) [(e)] No portion of a certification fee is refundable if TRS revokes or suspends a certification or if a company withdraws its certification after it has been accepted by TRS.

*§53.11. Coordination with Regulatory and Enforcement Agencies.*

(a) TRS shall refer complaints about qualified investment products or the companies or persons offering them to the Texas Department of Insurance, the Texas Department of Banking, or the State Securities Board, depending on whether one or more [both] agencies have jurisdiction over the complaint or over the person or company that is the subject of the complaint.

(b) TRS may receive notifications from the Texas Department of Insurance, the Texas Department of Banking, [or] the State Securities Board, or the Texas Attorney General regarding a product or company that violates certification requirements or standards.

*§53.13. Suspension or Revocation of Certification.*

(a) TRS may deny, suspend, or revoke a company's certification if the company no longer meets certification requirements or if TRS receives notification of a violation regarding the company or the company's product as provided in Texas Civil Statutes, Article 6228a-5, §6(f).

(b) - (d) (No change.)

(e) Suspension or revocation of certification automatically suspends or revokes registration of all company products including

products, issued by the company whose certification is suspended or revoked or an affiliate of such company, that are registered by a platform company.

*§53.16. Procedure for Product Registration.*

(a) A company certified to offer a qualified investment product that is an annuity contract may register annuity products. A company, other than a platform company, certified to offer qualified investment products other than annuity contracts may register such other investment products. A platform company certified to offer qualified investment products, other than annuity contracts, issued and registered with TRS by another company, may register such other qualified investment products. A company certified to offer both annuity contracts and qualified investment products other than annuity contracts may register both product types.

(b) - (i) (No change.)

(j) The retirement system may deny registration to offer products if the company does not provide all required information, if the information provided indicates the product does not meet the requirements for registration, or if the retirement system receives notification of a violation regarding the product from the Texas Department of Insurance, the Texas Department of Banking, the Texas State Securities Board, or the company. The retirement system shall deny registration of a product if the company has failed to certify to TRS; if TRS has denied, suspended, or revoked the certification of the company; or if the company has not certified to offer the product type sought to be registered.

(k) - (o) (No change.)

*§53.20. Administrative Service Providers.*

(a) A person, other than an employee of an educational institution, or an affiliate of the person may not enter into or renew a contract with an educational institution on or after September 1, 2009 under which the person is to provide services for or administer a plan offered by the institution under §403(b), Internal Revenue Code of 1986, unless the person:

(1) holds a license or certificate of authority issued by the Texas Department of Insurance;

(2) is registered as a securities dealer or agent or investment advisor with the State Securities Board; or

(3) is a financial institution that:

(A) is authorized by state or federal law to exercise fiduciary powers; and

(B) has its main office, a branch office, or a trust office in this state.

(b) A person who has entered into or renewed a contract with an educational institution on or after September 1, 2009 under which the person is to administer a plan offered by the institution under §403(b) of the Internal Revenue Code of 1986, and who holds a meeting at the institution that is open to employees of the institution and at which qualified investment products will be marketed, must provide representatives of certified companies that have previously agreed to comply with the institution's administrative requirements an opportunity to attend and market their qualified investment products at the meeting.

(c) For purposes of complying with subsection (b) of this section, the person administering the institution's plan may maintain a registry of certified companies with the right to an opportunity to attend meetings and market their qualified investment products. Such a certified company shall be responsible for providing the email addresses of



the company's representatives responsible for receiving email notification of meetings described in subsection (b) of this section. The person administering the institution's plan provides an opportunity to attend a meeting described in subsection (b) of this section if the person sends to the email addresses provided by the certified company a notice containing the date, time and physical location of the meeting, and such notice is sent no later than seven (7) days prior to the meeting.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2009.

TRD-200903673

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: October 4, 2009

For further information, please call: (512) 542-6438



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE**

#### **CHAPTER 155. REPORTS AND INFORMATION GATHERING**

#### **SUBCHAPTER D. VENDOR PROTEST PROCEDURES**

##### **37 TAC §155.41**

The Texas Board of Criminal Justice proposes new §155.41, concerning Procedures for Resolving Vendor Protests. The purpose of the rule is to provide a protest procedure to be used by an actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation, evaluation or award of a contract by the Texas Department of Criminal Justice.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to facilitate resolution of vendor protests by implementing a uniform protest procedure.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, melinda.bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this rule.

The new rule is proposed under Texas Government Code, §2155.076.

Cross Reference to Statutes: Texas Government Code, §492.013.

##### §155.41. Procedures for Resolving Vendor Protests.

(a) Purpose. The purpose of this rule is to provide a protest procedure to be used by an actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation, evaluation or award of a contract by the Texas Department of Criminal Justice (TDCJ or agency).

(b) Definitions. The words and terms used in this rule shall have the following meanings unless the context clearly indicates otherwise:

(1) "Interested Parties" are all vendors who have submitted bids, proposals or other expressions of interest for the provision of goods or services pursuant to a contract with the TDCJ.

(2) "Protesting Party" is any actual or prospective bidder, offeror or contractor who claims to be aggrieved in connection with the solicitation, evaluation or award of a contract by the TDCJ.

(c) Formal Protest. Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation, evaluation or award of a contract by the agency may formally protest to the director of the Contracts and Procurement Department (director).

(1) A formal protest must be made in writing and received by the director within 10 working days after the protesting party knows, or should have known, of the occurrence of the action that is protested. A formal protest shall conform to the requirements of subsections (c) - (e) of this rule, and the protest and any subsequent appeal shall be resolved through use of the procedures that are described in subsections (f) - (h) of this rule.

(2) The protesting party must mail or deliver a copy of the formal protest to all other interested parties. Upon request, the agency shall furnish to the protesting party a list of interested parties, as reflected in the records of the agency's Contracts and Procurement Department.

(d) Formal Protest Requirements. A formal protest submitted by a protesting party must be sworn to and contain the following:

(1) A specific identification of the statutory, regulatory or other provision(s) the protesting party alleges has been violated;

(2) A specific description of each action by the agency the protesting party alleges to be a violation of the statutory or regulatory provision(s) the protesting party has identified pursuant to paragraph (1) of this subsection;

(3) A precise statement of the relevant facts;

(4) Identification of the issue or issues to be resolved;

(5) The arguments and authorities that support the protest;

(6) A statement that a copy of the protest has been mailed or delivered to all other interested parties; and

(7) A copy of the letter the protesting party has sent to all other interested parties and the names and addresses of the specific persons to whom the letters were sent.

(e) Timeliness of Formal Protest.

(1) In the event of a timely formal protest under this rule, the agency shall not proceed further with the solicitation or award of the contract being protested unless the Chief Financial Officer (CFO), after consultation with the director, makes a written determination that to protect the best interests of the agency, the contract must be awarded without delay.

(2) A protest or an appeal that is untimely filed shall not be considered unless the CFO determines that good cause for delay is shown or that a protest or an appeal raises issues that are significant to agency procurement practices or procedures in general.

(f) Director's Authority to Settle the Protest.

(1) If a conflict of interest exists with the director or CFO, the duties of the director or the CFO shall transfer to the Deputy Executive Director.

(2) The director shall have the authority to settle and resolve the protest concerning the solicitation, evaluation or award of a contract at any time before the matter is appealed to the CFO. The director may solicit written responses to the protest from other interested parties.

(3) If the protest is not resolved through mutual agreement, the director shall issue a written determination responding to the protest.

(A) If the director determines no material violation of statutory or regulatory provisions has occurred, the director shall notify the protesting party and all other interested parties by sending a letter explaining the reasons for the determination.

(B) If the director determines a material violation of statutory or regulatory provisions has occurred in a situation in which a contract has not yet been awarded, the director shall notify the protesting party and all other interested parties by sending a letter explaining the reasons for the determination and the appropriate remedy.

(C) If the director determines a material violation of any statutory or regulatory provisions has occurred in a situation in which a contract has already been awarded, the director shall notify the protesting party and all other interested parties by sending a letter that explains the reasons for the determination. This letter may include an order declaring the existing contract void.

(g) Appeal. A protesting party who is not satisfied with the director's determination of a protest may appeal the determination to the CFO.

(1) An appeal of the director's determination must be in writing and received in the CFO's office not later than 10 business days after the date on which the director sent written notice of the determi-

nation. The scope of the protesting party's appeal shall be limited to a review of the director's determination.

(2) The protesting party must mail or deliver a copy of the appeal to all other interested parties.

(3) The appeal must contain the following:

(A) A statement that a copy of the appeal has been mailed or delivered to all other interested parties; and

(B) A copy of the letter the protesting party has sent to all other interested parties and the names and addresses of the specific persons to whom the letters were sent.

(h) CFO's Determination of the Appeal.

(1) The CFO may consider any documents agency staff or any interested party has submitted.

(2) The CFO's determination of the appeal shall be final. The CFO shall issue a written letter of determination to the protesting party and all other interested parties.

(3) A written determination issued by the CFO shall be the final administrative action of the agency concerning a formal protest.

(i) The Contracts and Procurement Department shall maintain all documentation on the purchasing process that is the subject of a protest or appeal in accordance with the agency's *Record Retention Schedule*.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2009.

TRD-200903679

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: October 4, 2009

For further information, please call: (936) 437-6003

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# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

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## **TITLE 22. EXAMINING BOARDS**

### **PART 27. BOARD OF TAX PROFESSIONAL EXAMINERS**

#### **CHAPTER 623. REGISTRATION AND CERTIFICATION**

##### **22 TAC §623.2**

Proposed amended §623.2, published in the February 13, 2009, issue of the *Texas Register* (34 TexReg 963), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on August 20, 2009.  
TRD-200903665

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# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 21. CITRUS

##### SUBCHAPTER C. CITRUS BUDWOOD CERTIFICATION PROGRAM

###### 4 TAC §§21.36, 21.37, 21.39, 21.40

The Texas Department of Agriculture (the department) adopts amendments to the Citrus Budwood Certification Program rules, §§21.36, 21.37, 21.39 and 21.40. Section 21.36(f)(2)(C) is adopted with changes to the proposed rule text published in the July 17, 2009, issue of the *Texas Register* (34 TexReg 4707) and will be republished. Sections 21.37, 21.39 and 21.40 are adopted without changes and will not be republished. The amendments are adopted to make these sections consistent with changes made to Chapter 19 of the Texas Agriculture Code (Code) by the passage of Senate Bill 1016 during the 81st Legislative Session. SB 1016 amends Chapter 19 of the Code, to prohibit individuals or businesses from using, for commercial purposes, citrus budwood that is required by department rule to be certified, unless the citrus budwood is certified or from a designated foundation grove. The purpose of the changes to Chapter 19, is to prohibit the propagation of diseased citrus nursery trees in commercial settings. To effectuate this purpose, the department adopts amendments to Chapter 21, which will require that citrus budwood used to propagate a citrus nursery tree of a variety found in §21.40 for commercial purposes be certified or produced from a designated foundation grove. Under the adopted rules, a citrus nursery tree is propagated for commercial purposes if either the citrus nursery tree itself or the fruit produced from the citrus nursery tree is intended to be or is actually sold, bartered, or otherwise commercially distributed.

Section 21.36 provides record keeping requirements. Subsection (f)(2)(C) is adopted with changes, based on comments received, to provide that records must include number of buds from each row of source trees, rather than from each source tree, as proposed. Section 21.37 provides for inspection of citrus nursery plants and the relevant records. Section 21.39 states that it is a violation to use citrus budwood that is neither certified nor from a designated foundation grove to propagate citrus nursery trees for commercial purposes; and §21.40 states that trees produced prior to September 1, 2009 are exempt from the requirement of this section.

Comments on the proposal were received from citrus producers in regard to proposed §21.36(f)(2)(C). Commenters expressed concern that the requirement that reporting include number of buds from each source tree, as proposed, would be burdensome

on producers. The department agrees with the comments and has modified that section accordingly to now require that records must include number of buds from each row of source trees.

The amendments are adopted under the Texas Agriculture Code (the Code), §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for a specific treatment of quarantined articles; the Code, §19.006, that provides the department, with the authority to adopt standards and rules necessary to administer the citrus budwood certification program; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

###### §21.36. Record Keeping.

(a) Records must be maintained for a minimum of four years by the foundation grove and by nurseries selling certified citrus nursery trees.

(b) The following records of the foundation grove, and the increase block operations must be maintained on forms promulgated by the department at the foundation grove:

(1) a map of trees showing block and row numbers and locations of each variety;

(2) results of tests verifying that all trees are free of diseases listed in this subchapter; and

(3) records of budwood sources used to establish trees along with certificates and/or test results obtained to verify that the budwood was free of diseases listed in this subchapter.

(c) The following records of certified budwood sales must be maintained on forms promulgated by the department at the foundation grove:

(1) origin of budwood sold, by source tree lot number;

(2) number of buds sold daily, summarized by month; and

(3) records of each sale, including:

(A) name and address of buyer;

(B) number of buds sold;

(C) variety and source tree lot number(s); and

(D) date of sale.

(d) The following records of certified budwood purchases and certified citrus nursery tree sales must be maintained on forms promulgated by the department at nurseries that purchase certified budwood:

(1) specific records of each purchase including:

(A) date of purchase;

(B) variety(ies) purchased; and

(C) number of buds purchased from each source tree;

(2) number of certified citrus nursery trees successfully budded from each budwood variety purchased;

(3) location of certified citrus nursery trees, until the trees are sold; and

(4) records of sales of certified citrus nursery trees.

(e) Sellers of certified citrus nursery trees must maintain records to adequately verify the origin or source of such trees.

(f) For purposes of this subsection, "commercial use" means sell, barter, or otherwise commercially distribute and applies to both a citrus nursery tree itself and the fruit produced from the citrus nursery tree. Businesses that propagate citrus nursery trees for commercial use of varieties that are mandatory under §21.40 of this title (relating to Mandatory Varieties) must abide by the following conditions.

(1) Only citrus budwood that is certified or from a designated foundation grove shall be used for propagation.

(2) Records of certified budwood purchases must be maintained for a minimum of four years including:

(A) date of purchase;

(B) variety(ies) purchased;

(C) number of buds purchased from each row of source trees;

(D) number of citrus nursery trees successfully budded from each budwood variety purchased; and

(E) location of citrus nursery trees until they are planted to establish citrus orchards.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2009.

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Texas Department of Agriculture

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For further information, please call: (512) 463-4075



## **TITLE 7. BANKING AND SECURITIES**

### **PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER**

#### **CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

###### **7 TAC §84.105**

The Finance Commission of Texas (commission) adopts new §84.105, concerning Indigency Affidavit for Appeal of Conditional Delivery Determination, regarding motor vehicle sales finance licensees, without changes from the proposal published

in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4464).

With the enactment of House Bill 2556 (HB 2556), the 81st Texas Legislature added §348.013 to the Texas Finance Code in order to outline the rights and duties of the parties to conditional delivery agreements of motor vehicles. Among other things, HB 2556 provides certain limitations on conditional delivery agreements in Texas, such as a maximum term of 15 days and inclusion in the agreement of the agreed value of any trade-in motor vehicle.

In addition, HB 2556 states that an amount paid or required to be paid under Texas Finance Code, §348.013(g) regarding trade-in value is subject to review by the Consumer Credit Commissioner (commissioner). The trade-in value becomes important if the prospective sale is not consummated and the dealer is unable to return the prospective retail buyer's vehicle. The commissioner's determination regarding trade-in value may be appealed, and those requesting an appeal are required by §348.013(m) to pay a deposit to secure payment of the costs of the hearing, unless they cannot afford it and file an affidavit to that effect. HB 2556 authorizes the commission to prescribe the form and content of this affidavit.

The purpose of the new rule is to implement HB 2556 by specifying the requirements for the affidavit (indigency affidavit) that may be filed by a prospective retail buyer who is unable to pay the deposit required for appeal of a conditional delivery determination made by the commissioner. The required information closely tracks the contents of an affidavit under Rule 145, Texas Rules of Civil Procedure. The agency has modeled the sample indigency affidavit after similar forms used commonly in the Texas and federal court systems.

Section 84.105 outlines the required information that a prospective retail buyer may file when that individual cannot afford to pay the deposit required under Texas Finance Code, §348.013(m) for appeal of a determination made by the commissioner under §348.013(g). The affiant must provide information under the following categories: monthly income, property, monthly expenses, and debts and other liabilities. Additionally, the rule states that the federal poverty guidelines will be used by the commissioner when evaluating an individual's affidavit for waiver of the required deposit.

The new rule also provides a sample affidavit. Use of the model affidavit is not required, although any affidavit submitted must contain the required information as specified in the rule text.

The commission received no written comments on the proposal.

This new section is adopted under Texas Finance Code, §348.013(m) (Acts 2009, 81st Leg.), which authorizes the commission to adopt rules to prescribe the form and content of this affidavit. The new rule is also adopted under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The statutory provisions affected by the adopted new section are contained in Texas Finance Code, Chapter 348.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 21, 2009.

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**CHAPTER 89. PROPERTY TAX LENDERS**  
**SUBCHAPTER G. TRANSFER OF TAX LIEN**

**7 TAC §89.701, §89.702**

The Finance Commission of Texas (commission) adopts new §89.701, concerning Sworn Document Authorizing Transfer of Tax Lien and §89.702, concerning Certified Statement of Transfer of Tax Lien, regarding property tax lenders, with changes to the proposal published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4466). The new rules adopted in §89.701 and §89.702 outline new Subchapter G, concerning Transfer of Tax Lien.

In Texas, a property owner who owes property taxes to a taxing unit may allow another person, often called a transferee or property tax lender, to pay the property tax on the owner's behalf. The tax lien then passes from the taxing unit to the transferee. While the Texas Tax Code outlines certain items that must be included in the documents to transfer a tax lien, model forms do not presently exist to execute the transfer and certify that the transfer occurred and the amounts paid.

In Senate Bill 1620 (SB 1620), the 81st Texas Legislature amended Texas Tax Code, §32.06(a-4), directing the commission to promulgate rules prescribing "the form and content of the sworn document under Subsection (a-1) and the certified statement under Subsection (b)." These two forms are used to transfer tax liens from the taxing unit to the transferee or property tax lender.

The purpose of the new rules is to implement SB 1620 by specifying the requirements for the sworn document as provided in Texas Tax Code, §32.06(a-1) and the certified statement as provided in §32.06(b). Prior to the proposal, the agency reviewed forms that are currently in use by several property tax lenders in conjunction with the relevant statutory provisions. The new rules track the forms already used by the industry.

The commission received four written comments on the proposal from the Texas Property Tax Lienholders Association (TPTLA); C-1 Capital Markets, LP (Capital Markets); the Tax Assessor Collectors Association of Texas (TACA); and a joint comment from Genesis Tax Solutions, Inc. (Genesis) and BRAVO Servicing Solutions, Inc. (BRAVO). The comment submitted by Capital Markets and the joint comment submitted by Genesis and BRAVO are identical in nature. The comments submitted on behalf of these three parties contain three suggested changes and then continue by providing full support to the comment submitted by TPTLA. The purpose of the comments overall is to clarify or enhance the effectiveness of the rules and forms. All of the comments offer specific suggestions to certain provisions of the rules. The commission has incorporated changes since the proposal to address the commenters' concerns, often in agreement with the suggestions offered. The commission will first address general comments with regard to the approach used with

the forms and issues common to both rules. Then responses to each specific comment are included after the individual rule purposes in the paragraphs that follow.

Both new rules provide forms for use in the property tax lending process. While the proposal used the terms "sample" and "example" regarding the forms, the proposed rules contemplated that the required information as specified in the rule text be mandated. All four commenters are in favor of standardized forms. However, with the inclusion of optional information, as suggested by industry members, one commenter aptly characterizes the concern of the commission that while "[t]he cost savings and efficiency benefits of model forms diminish if the forms are not mandatory," there are "difficulties associated with mandating forms that leave no room for variance . . . ." Three of the commenters suggest the following approach: "[D]iscretion to alter each form [should] be given only to the party responsible [for] its drafting and execution. In other words, the tax collectors would be permitted to modify the form they use to certify the transfers, and the owners and transferees could modify the form they use to authorize the payment and transfer." These commenters agree that this approach would increase the efficiency of tax lien transfers, as tax collectors would not be able to reject the sworn statements for items not required by the rules.

The commission agrees that this drafter-controlled approach would implement the intent of the proposal and strikes the appropriate balance of minimum standards while providing flexibility to the drafter of each form. Therefore, this adoption clarifies that the standard forms must be utilized unless the drafting party of that form elects to add items from the exclusive list of optional information (or attach explanatory information as described later in this proposal) provided in the rule for that form. Subsection (b) of §89.701 now begins as follows: "A transferee or property owner may only include the optional information contained in this subsection or attach information as provided in subsection (d) of this section. . . . The transferee or property owner may require that the following information be added to the sworn document . . . ." The last sentence is almost identical to the suggestion provided by one of the commenters. Corresponding statements have been added to §89.702(b) as well.

Three commenters request that if the owner's sworn authorization contains the required information under the rule that the authorization cannot be challenged or refused. The purpose of these regulations is to create uniformity and stability through forms that are simple to use; the more standardized the form, typically the easier it is to use. The rules intend to give confidence to the parties involved in tax lien transfers that their form will be accepted if the minimum requirements are met. To this end, the commission has added the following statement to §89.701(b): "Any other information included on or added to the standard form may invalidate the satisfaction of Texas Tax Code, §32.06(a-1)." A parallel provision has been added to §89.702(b). The revised language regarding the fact that other information "may invalidate" the forms is intended to provide confidence of acceptance while avoiding the costly invalidation of forms containing minor technical additions (e.g. extra footnotes or form numbers). If material changes are made to the forms, however, the forms may be considered to be invalidated. Moreover, the commission has further clarified the rules by adding equivalent statements to each subsection (a) regarding required information. Section 89.702(a) now includes the following statement: "A certified statement containing all of the required information provided by this subsection meets

the requirements of Texas Tax Code, §32.06(b)." A parallel provision has been added to §89.701(a). Additionally, clarifying changes have been made to subsection (c) of each section to reflect the standard nature of the forms.

Regarding the amount paid in §89.701(a)(7) and §89.702(a)(5) and as listed on both forms, all four commenters agree that the components of the payment should not be itemized. Two commenters believe that such itemization is beyond the scope of the statute and would almost be impossible to comply with a vast majority of the time. Another commenter states: "[T]he penalties and interest should not be broken out as amounts separate from the 'taxes'. . . . [That] makes it appear that the interest and penalties are not part of the tax lien, when in fact they are. (See sec. 32.01(a) of the Texas Tax Code.) The taxes, penalties, and interest should be listed as one amount, which is the amount of the tax lien owed on the property." The four commenters share the belief that increased errors due to itemization would delay the tax lien transfer process and result in additional burdens and costs to all parties involved.

Nevertheless, the latter commenter expressed concern that some tax collectors may not be able to certify the amount of collection costs paid. The commenter further stated that tax collectors understand the legal requirements of the Tax Code, but with few exceptions the tax collectors are not the ones incurring the collection costs. Because the tax collectors usually do not incur the collection costs, the commenter states that it is difficult for tax collectors to certify that the collection costs have been paid.

The agency has reviewed the statutory provision in question, which states:

Texas Tax Code, §32.06(b)

"(b) If a transferee authorized to pay a property owner's taxes pursuant to Subsection (a-1) pays the taxes and any penalties and interest imposed, the collector shall issue a tax receipt to that transferee. In addition, the collector or a person designated by the collector shall certify that the taxes and any penalties and interest on the subject property *and collection costs* have been paid by the transferee on behalf of the property owner and that the taxing unit's tax lien is transferred to that transferee." (emphasis added)

The agency believes that the Tax Code requires tax collectors to certify that collection costs (along with the taxes, penalties, and interest) have been paid. While the commission cannot ignore this statutory requirement, the plain language of §32.06(b) as quoted does not require that these figures be broken out by the collector into four separate amounts. Thus, for this adoption, the agency has revised §89.701(a)(7) and §89.702(a)(5), as well as the accompanying notations on each figure to reflect that no itemization is required while providing a parenthetical list on the forms of the four items to be included in the amount paid.

The final issue concerning both rules relates to transfers involving multiple accounts. As explained by one commenter, "[s]uch 'multiple account transfers' are beneficial to property owners, because they simplify the process of combining multiple accounts into one loan, which greatly reduces the owner's closing costs and, ultimately, the cost of the funds." The commenter continues by suggesting that "the rule be modified to state that the information required to be provided by §89.701(6); (7); (8) and §89.702(3); (4); (5); (6) may be provided in table format as exhibits to the sworn authorization and the certified statement." Two other commenters join in agreeing with this suggestion. The

commission recognizes the cost savings that this simple modification would provide to property tax lenders and to the taxing units. Therefore, for this adoption, a new subsection (d) has been added to each rule allowing permissible changes, including the implementation of the commenter's suggestion.

Section 89.701 outlines the required information that the property owner must provide to the taxing unit to authorize the transfer of the tax lien to the transferee. The sworn statement verifies that the property tax lender is paying the outstanding taxes, penalties, interest, and collection costs on the owner's behalf.

Regarding §89.701(a)(13), one commenter (joined by two others) requests that the statement concerning tax deferral be modified as follows: "I have been given notice that if this property is my homestead and I am either over the age of 64 or disabled, I may be eligible for a tax deferral under Texas Tax Code §33.06." The commission believes that the suggested wording provides better clarity while preserving the form's use for owners who are legal entities. Thus, the commission has adopted the commenter's language aside from the use of "age 65 or older" as opposed to "over the age of 64" to maintain consistency with statutory language.

Concerning §89.701(b), three commenters suggest that language be added to address "the event a transfer is denied, rejected, or canceled, the property owner does not intend the payment by the transferee to be a 'voluntary payment' of the tax lien, and that the payment should be returned or refunded to the payor." The commission believes that this language is more appropriately included as part of the property tax loan agreement, not the sworn document promulgated by the rule. Hence, the commission declines to add the suggested language.

Also with regard to subsection (b), one commenter suggests "that the 'optional' information be eliminated or kept to a minimum." Upon review of the four proposed items included as optional information, the commission believes that three of the four should be maintained: the notice of confidentiality rights, the homestead statement, and the statement regarding no federal liens. The notice of confidentiality is a required right of the property owner. The latter two options provide the opportunity for property tax lenders to better clarify the context of the transfer. However, the commission recognizes that the reliance statement provided in proposed paragraph (2) is otherwise stated in required information contained in the form and thus, is not necessary. As a result, for this adoption, proposed §89.701(b)(2) has been deleted and the remaining paragraphs have been renumbered accordingly.

Additionally, three commenters request that the form in §89.701(c) allow modification to accommodate joint owners. The commission agrees with this suggestion and has revised the rule as follows: the standard form lists plural options for owners and representatives and under the new permissible changes subsection (d), an allowance is listed to attach additional signature blocks for joint owners.

Section 89.702 describes the required information that the taxing unit must provide to the transferee in order to certify that the transferee paid the taxes owed the taxing unit on a given piece of property, and that the tax lien was transferred to the transferee.

Two commenters explain that certain Texas bankruptcy courts "are taking the position that the tax *lien* is *paid* at the time of transfer." (emphasis in original). As a result, the two commenters "support the following small modifications of the form to clarify and reinforce state law: that the amount paid to the tax asses-

sor/collector is not for payment of the tax lien but instead, is the consideration for the transfer of the tax lien and all underlying rights thereof." Two of the requested changes relate to titles: (1) that the form and rule title read, "Certified Statement of Transfer of Tax Lien," and (2) that §89.702(a)(5) and the accompanying form title read, "Amount Paid for Transfer." The commission does not have any objection to these revisions, as the suggested wording maintains the clarity and purpose of the forms. Thus, the commission has incorporated the revised titles into this adoption.

Also suggested in relation to the bankruptcy courts' approach, the commenters request that the statement in §89.702(a)(10) state as follows: "I, (Insert Name of Collector), tax assessor-collector for (Insert Name of Taxing Unit) and for all taxing units for which (Insert Name of Taxing Unit) collects ad valorem taxes, certify that the above-named transferee or transferee's agent ("Transferee") has made payment of the amount listed above to the above-named taxing units on the property described above as consideration for a transfer of the tax lien(s), and that the tax liens held by taxing units for which I collect taxes on the property for the tax years listed above are hereby transferred to Transferee in accordance with Texas Tax Code §32.06. I have issued a receipt to Transferee in conjunction with this certification reflecting the payment for the transfer in the amount of taxes, penalties, interest, and collection costs." Aside from the unnecessary phrase "for which I collect taxes," the commission agrees with the changes recommended by the commenter and has revised subsection (a)(10) for this adoption.

In reference to the optional information listed in §89.702(b), three commenters believe that proposed paragraphs (1) and (4) would require the taxing units to certify information about which they are not authorized. These two provisions were suggested to the agency by an industry member prior to the proposal. Upon additional review, the compliance statement as contained in proposed paragraph (1) and the 30-day delivery obligation proposed in paragraph (2) are mere restatements of requirements within the Texas Tax Code. As the certified statement from the taxing units is not a consumer notice document, the commission believes that these two provisions are not necessary or appropriate for optional inclusion on this form. Consequently, for this adoption, proposed §89.702(b)(1) and (b)(4) have been deleted, and the remaining two paragraphs have been renumbered accordingly.

These new sections are adopted under Texas Finance Code, §351.007 (Acts 2007, 80th Leg., ch. 1220), which authorizes the commission to adopt rules to ensure compliance with the "Property Tax Lender License Act," and Texas Tax Code, §32.06(a-4)(3) (Acts 2009, 81st Leg.), which authorizes the commission to adopt rules to prescribe the form and content of the sworn document and certified statement under §32.06.

The statutory provisions affected by the adopted new sections are contained in Texas Tax Code, §32.06, and Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220, eff. Sept. 1, 2007).

#### *§89.701. Sworn Document Authorizing Transfer of Tax Lien.*

(a) Required information. A sworn document containing all of the required information provided by this subsection meets the requirements of Texas Tax Code, §32.06(a-1). A sworn document under this section must contain the following information:

- (1) the name of the county where the property is located;

- (2) a statement that after the document is recorded, it is to be returned to the transferee;

- (3) a statement by a notary public identifying the affiant(s), either property owner(s) or authorized representative(s), and stating that the affiant(s) personally appeared before the notary and made the statements under oath;

- (4) a statement by the property owner(s) or authorized representative(s) that the affiant(s) is over 18 years of age and is capable of making the affidavit, and that the facts stated in the affidavit are within the affiant(s)' personal knowledge and are true and correct;

- (5) a statement by the affiant(s) that either the affiant(s) or the entities represented by the affiant(s) owns the real property described in the document;

- (6) a description of the property that includes:

- (A) the account number or property identification number used by the taxing unit(s);

- (B) the legal description of the property; and

- (C) the street address of the property, if applicable;

- (7) the amount paid for the transfer;

- (8) the tax years for the amount paid;

- (9) the transferee's name;

- (10) the transferee's license status, evidenced by:

- (A) if licensed, the transferee's OCCC property tax lender license number; or

- (B) if exempt from licensing under Texas Finance Code, §351.051(c)(1):

- (i) an affidavit stating the entity's type of organization that qualifies it for the exemption;

- (ii) any charter number assigned by the governmental authority that issued the entity's charter; and

- (iii) the address of the entity's main office; or

- (C) if exempt from licensing under Texas Finance Code, §351.051(c)(2), the certificate issued by the OCCC indicating the entity's exemption;

- (11) the transferee's street address;

- (12) the following statement: "Pursuant to Texas Tax Code §32.06, I hereby authorize the above-named transferee or transferee's agent (the "Transferee"), to pay all taxes, penalties, interest, and collection costs imposed by any and all local taxing units or their agents on the real property, described above, for the tax years listed above. I further authorize and direct the tax assessor-collector(s) for said taxing units to issue a tax receipt with the collector's seal of office or notarized signature to the Transferee and to certify that the taxes and any penalties and interest on the subject property and collection costs have been paid by the Transferee on behalf of the owner, and the tax lien on the owner's property has been transferred to the Transferee.";

- (13) the following statement: "I have been given notice that if this property is my homestead and I am either age 65 or older or disabled, I may be eligible for a tax deferral under Texas Tax Code §33.06.";

- (14) the date the document was signed;

- (15) the signature and printed name of the property owner or authorized representative;



(16) the representative capacity or title of the authorized representative, if applicable; and

(17) the notary public's seal and signature.

(b) Optional information. A transferee or property owner may only include the optional information contained in this subsection or attach information as provided in subsection (d) of this section. Any other information included on or added to the standard form may invalidate the satisfaction of Texas Tax Code, §32.06(a-1). The transferee or property owner may require that the following information be added to the sworn document:

(1) a notice of confidentiality rights disclosure substantially similar to the required notice or disclosure under Texas Property Code, §11.008;

(2) a statement that the property either is or is not the property owner's homestead;

(3) a statement that there are no federal liens against the property.

(c) Standard sworn document. The standard sworn document under Texas Tax Code, §32.06(a-1) is presented in the following figure. Figure: 7 TAC §89.701(c)

(d) Permissible changes.

(1) Multiple account transfers. In the case of multiple account transfers, the information required by subsection (a)(6), (7), and (8) of this section may be provided in table or list format as an attachment to the standard form.

(2) Joint owners. In a transfer involving joint owners, additional signature blocks containing the information required by subsection (a)(6), (7), (8), (9), and (15) of this section may be attached to the standard form.

#### §89.702. *Certified Statement of Transfer of Tax Lien.*

(a) Required information. A certified statement containing all of the required information provided by this subsection meets the requirements of Texas Tax Code, §32.06(b). A certified statement issued under this section by a tax assessor-collector must contain the following information:

- (1) the name of the county where the property is located;
- (2) the date the certification is executed;
- (3) a description of the property that includes:

(A) the account number or property identification number used by the taxing unit(s);

(B) the legal description of the property; and

(C) the street address of the property, if applicable;

(4) the taxing unit(s) transferring a lien or liens to the transferee;

(5) the amount paid for the transfer;

(6) the tax years for the amount paid;

(7) the property owner's name;

(8) the transferee's name;

(9) the transferee's street address;

(10) the following statement: "I, (Insert Name of Collector), tax assessor-collector for (Insert Name of Taxing Unit) and for all taxing units for which (Insert Name of Taxing Unit) collects ad valorem taxes, certify that the above-named transferee or transferee's

agent ("Transferee") has made payment of the amount listed above to the above-named taxing units on the property described above as consideration for a transfer of the tax lien(s), and that the tax liens held by taxing units on the property for the tax years listed above are hereby transferred to Transferee in accordance with Texas Tax Code §32.06. I have issued a receipt to Transferee in conjunction with this certification reflecting the payment for the transfer in the amount of taxes, penalties, interest, and collection costs.";

(11) the name of the tax collector-assessor;

(12) the name of the taxing unit(s);

(13) the signature of the tax assessor-collector, or that of the tax assessor-collector's deputy;

(14) one of the following:

(A) the tax assessor-collector's seal of office; or

(B) a notary public's seal of office and a statement that the certified statement was subscribed and sworn to before a notary public by the tax assessor-collector or the tax assessor-collector's deputy; and

(15) a statement that after the document is recorded, it is to be returned to the transferee.

(b) Optional information. A tax assessor-collector may only include the optional information contained in this subsection or attach information as provided in subsection (d) of this section. Any other information included on or added to the standard form may invalidate the satisfaction of Texas Tax Code, §32.06(b). The tax assessor-collector may require that the following information be added to the certified statement:

(1) a statement that the tax assessor-collector does not review the information provided by other parties for accuracy;

(2) a statement that the tax assessor-collector's certification of the amounts paid and that the transfer occurred does not constitute the rendering of legal advice.

(c) Standard certified statement. The standard certified statement under Texas Tax Code, §32.06(b) is presented in the following figure.

Figure: 7 TAC §89.702(c)

(d) Permissible changes. In the case of multiple account transfers, the information required by subsection (a)(3), (4), (5), and (6) of this section may be provided in table or list format as an attachment to the standard form.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 21, 2009.

TRD-200903683

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Effective date: September 10, 2009

Proposal publication date: July 3, 2009

For further information, please call: (512) 936-7621

## TITLE 16. ECONOMIC REGULATION

## PART 1. RAILROAD COMMISSION OF TEXAS

### CHAPTER 15. ALTERNATIVE FUELS RESEARCH AND EDUCATION DIVISION SUBCHAPTER B. PROPANE CONSUMER REBATE PROGRAM

#### 16 TAC §15.125

The Railroad Commission of Texas adopts amendments to §15.125, relating to Application, without changes to the proposal published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4482). The amendments make a non-substantive addition to the consumer rebate application form and allow two additional methods of filing the form.

In §15.125, relating to Application, the Commission adopts an amendment in subsection (a) to allow applicants to submit another identification number as determined by the Comptroller of Public Accounts as a third option. The two current options are a tax identification number or a Social Security number. In subsection (e), the Commission adopts new wording to allow applicants to submit applications electronically or by facsimile transmission.

The Commission received one comment on the proposal, which supported the proposed amendment to allow the use of a secure identification number in lieu of a tax identification number or a social security number.

The Commission adopts the amendments under the Texas Natural Resources Code, §113.241, which authorizes the Commission to adopt all necessary rules relating to activities regarding the use of LPG and other environmentally beneficial alternative fuels; §113.243, which authorizes the Commission to research, develop, and implement marketing, advertising, and informational programs relating to alternative fuels to make alternative fuels more understandable and readily available to consumers; and §113.2435, which authorizes the Commission to establish consumer rebate programs for purchasers of appliances and equipment fueled by LP-gas or other environmentally beneficial alternative fuels for the purpose of achieving energy conservation and efficiency and improving the quality of air in this state.

Statutory authority: Texas Natural Resources Code, §§113.241, 113.243, and 113.2435.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas, on August 18, 2009.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 18, 2009.

TRD-200903628

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Effective date: September 7, 2009

Proposal publication date: July 3, 2009

For further information, please call: (512) 475-1295



## TITLE 22. EXAMINING BOARDS

### PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

#### CHAPTER 75. RULES OF PRACTICE

##### 22 TAC §75.7

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §75.7, concerning Required Fees and Charges, to adopt two new fees and to increase one existing fee. The amendment to §75.7 and the fee graphic contained in §75.7(a) were published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4606) and are being adopted without change. The new fees are (1) a \$150 initial fee for applying for a chiropractic college faculty license and (2) a \$135 annual renewal fee for renewing a chiropractic college faculty license. The fee for applying for approval of a continuing education course is increased from \$25 to \$165. The Board also adopts an update to the graphic contained in §75.7(a), which lists agency fees, with the only fee changes being the addition of the two new fees referenced above and the increase in continuing education course application fee.

The new fees and revised graphic are adopted to cover the costs associated with agency operations, to generate sufficient revenue as required by Senate Bill 1, 81st Leg, R.S. and to implement HB 3450 relating to issuing temporary faculty licenses to qualified faculty members at chiropractic colleges in Texas.

No comments were received by the Board on the proposed rule amendment.

These amendments are adopted under Texas Occupations Code §201.152, relating to rules, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic and §201.153 relating to the Board's authority to set fees in amounts reasonable and necessary to cover the costs of administering the Chiropractic Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2009.

TRD-200903653

Glenn Parker

Executive Director

Texas Board of Chiropractic Examiners

Effective date: September 8, 2009

Proposal publication date: July 10, 2009

For further information, please call: (512) 305-6901



## PART 9. TEXAS MEDICAL BOARD

### CHAPTER 175. FEES, PENALTIES AND FORMS

#### 22 TAC §§175.1, 175.2, 175.5

The Texas Medical Board (Board) adopts amendments to Chapter 175, §175.1, concerning Application Fees, §175.2, concerning Registration and Renewal Fees and §175.5, concerning

Payment of Fees or Penalties. Sections 175.1 and 175.2 are adopted with non-substantive changes to the proposed text as published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4621). The text of the rules will be republished. Section 175.5 is adopted without changes to the proposed text as published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4621) and will not be republished.

The Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting held on July 22, 2009. The comments will be incorporated into future amendments to Chapter 175 as approved by the Board to be published in the *Texas Register* and to be reviewed at the Board's November 2009 meeting.

The Board received no public written comments and no one appeared to testify at the public hearing held on August 21, 2009, regarding §§175.1, 175.2, 175.5 and the amendments are adopted with non-substantive changes.

The amendments to §175.1, relating to Application Fees, increase certain application fees to cover the agency's costs. The Board has determined that the increases in fees are necessary to carry out its functions. Nonsubstantive changes were made based on the surcharges TexasOnline assesses for online applications for initial physician-in-training permits and for physician-in-training permits for program transfers.

The amendments to §175.2, relating to Registration and Renewal Fees, increase certain registration and renewal fees to cover the agency's costs, and establish a charge for the review of continuing acupuncture education courses on a per course basis. The Board has determined that the increases in fees are necessary to carry out its functions. Nonsubstantive changes were made based on the surcharges TexasOnline assesses for the renewal of non-certified radiologic technician permits.

The amendments to §175.5, relating to Payments of Fees or Penalties, provide limited conditions for when an applicant or licensee may obtain a refund of application or registration fees. The Board has determined that the new rules will provide appropriate conditions under which applicants and licensees may obtain refunds.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Board to adopt rules and bylaws as necessary to govern its own proceedings, perform its duties, regulate the practice of medicine in this state, enforce this subtitle, and establish rules related to licensure.

#### *§175.1. Application Fees.*

The board shall charge the following fees for processing an application for a license or permit:

- (1) Physician Licenses:
  - (A) Full physician license (includes surcharge of \$205)--\$885.
  - (B) Telemedicine license (includes surcharge of \$205)--\$885.
  - (C) Administrative medicine license (includes surcharge of \$205)--\$885.
  - (D) Reissuance of license following revocation (includes surcharge of \$205) \$885.
  - (E) Temporary license:

- (i) Distinguished professor--\$50.
  - (ii) State health agency--\$50.
  - (iii) Visiting physician--\$0-.
  - (iv) Visiting professor--\$167.
  - (v) National Health Service Corps--\$0-.
  - (vi) Faculty temporary license (includes surcharges of \$280)--\$737.
  - (vii) Postgraduate Research Temporary License--\$0-.
  - (viii) Medically underserved area--\$50.
  - (ix) Regular--\$107.
- (F) Licenses and Permits relating to Medical Education:
  - (i) Initial physician in training permit (includes surcharge of \$5)--\$202.
  - (ii) Physician in training permit for program transfer (includes surcharge of \$4)--\$131.
  - (iii) Evaluation or re-evaluation of postgraduate training program--\$250.
- (2) Physician Assistants:
  - (A) Physician assistant license (includes surcharge of \$5)--\$205.
  - (B) Reissuance of license following revocation (includes surcharge of \$5)--\$205.
  - (C) Temporary license--\$107.
- (3) Acupuncturists/Acudetox Specialists/Continuing Education Providers:
  - (A) Acupuncture licensure (includes surcharge of \$5)--\$305.
  - (B) Temporary license for an acupuncturist--\$107.
  - (C) Acupuncturist distinguished professor temporary license--\$50.
  - (D) Acudetox specialist certification (includes surcharge of \$2)--\$52.
  - (E) Continuing acupuncture education provider--\$50.
  - (F) Review of a continuing acupuncture education course--\$25.
  - (G) Review of continuing acudetox acupuncture education courses--\$50.
- (4) Non-Certified Radiologic Technician permit (includes surcharge of \$2)--\$52.
- (5) Non-Profit Health Organization initial certification--\$2,500.
- (6) Surgical Assistants:
  - (A) Surgical assistant licensure--\$300.
  - (B) Temporary license--\$50.

#### *§175.2. Registration and Renewal Fees.*

The board shall charge the following fees to continue licenses and permits in effect:

- (1) Physician Registration Permits:

(A) Initial biennial permit (includes surcharges of \$496)--\$813.

(B) Subsequent biennial permit (includes surcharges of \$492)--\$809.

(C) Additional biennial registration fee for office-based anesthesia--\$210 (includes surcharge of \$10).

(2) Physician Assistant Registration Permits:

(A) Initial annual permit (includes surcharges of \$10)--\$257.50.

(B) Subsequent annual permit (includes surcharges of \$6)--\$253.50.

(3) Acupuncturists/Acudetox Specialists Registration Permits:

(A) Initial annual permit for acupuncturist (includes surcharges of \$10)--\$322.50.

(B) Subsequent annual permit for acupuncturist (includes surcharges of \$6)--\$318.50.

(C) Annual renewal for acudetox specialist certification--\$87.50.

(4) Non-Certified Radiologic Technician permit annual renewal (includes surcharge of \$3)--\$115.50.

(5) Non-Profit Health Organization biennial recertification--\$1,125.

(6) Surgical Assistants registration permits:

(A) Initial biennial permit (includes surcharges of \$6)--\$531.

(B) Subsequent biennial permit (includes surcharges of \$2)--\$527.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 21, 2009.

TRD-200903697

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Effective date: September 10, 2009

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For further information, please call: (512) 305-7016



## PART 15. TEXAS STATE BOARD OF PHARMACY

### CHAPTER 291. PHARMACIES

#### SUBCHAPTER A. ALL CLASSES OF PHARMACIES

##### 22 TAC §291.6

The Texas State Board of Pharmacy adopts amendments to §291.6, concerning Pharmacy License Fees. The amendments

were published in the June 12, 2009, issue of the *Texas Register* (34 TexReg 3892). The amendments raise pharmacy license fees based on increased expenses and are adopted with changes to the proposed text as described below.

The Board was able to substantially reduce the proposed fee increase for all licensees, including reducing the proposed pharmacy initial and renewal fees from \$491 to \$452, based on the final appropriations that were approved by the Texas Legislature.

No comments were received.

The amendments are adopted under §§551.002, 554.051, 554.006, and 564.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §564.006 as authorizing the agency to adopt rules to establish reasonable and necessary fees to produce sufficient revenue to cover the cost of administering the Act. The Board interprets §564.051 as authorizing the agency to collect a surcharge to fund a program to aid impaired pharmacists and pharmacy students.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568-569, Texas Occupations Code.

##### §291.6. Pharmacy License Fees.

(a) Initial License Fee.

(1) The fee for an initial license shall be \$452 for a two year registration and for processing the application and issuance of the pharmacy license as authorized by the Act §554.006.

(2) In addition, the following fees shall be collected:

(A) \$15 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act §564.051;

(B) \$10 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(C) \$5 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(3) New pharmacy licenses shall be assigned an expiration date and initial registration fee shall be prorated based on the assigned expiration date.

(b) Biennial License Renewal. The Texas State Board of Pharmacy shall require biennial renewal of all pharmacy licenses provided under the Act §561.002.

(c) Renewal Fee.

(1) The fee for biennial renewal of a pharmacy license shall be \$452 for processing the application and issuance of the pharmacy license as authorized by the Act §554.006;

(2) In addition, the following fees shall be collected:

(A) \$15 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act §564.051;

(B) \$10 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(C) \$2 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(d) Duplicate or Amended Certificates. The fee for issuance of an amended pharmacy license renewal certificate shall be \$20.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2009.

TRD-200903700

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: October 1, 2009

Proposal publication date: June 12, 2009

For further information, please call: (512) 305-8028



## SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

### 22 TAC §291.32

The Texas State Board of Pharmacy adopts amendments to §291.32, concerning Personnel. The amendments are adopted without changes to the proposed text as published in the June 12, 2009, issue of the *Texas Register* (34 TexReg 3893).

The amendments allow Class A pharmacies that dispense no more than 20 prescription drugs to have a 1:5 ratio of pharmacists to pharmacy technicians/pharmacy technician trainees and the amendments eliminate the requirement for such pharmacies to be primarily involved in non-sterile compounding.

No comments were received.

The amendments are adopted under §551.002, and §554.051, of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8028



## CHAPTER 295. PHARMACISTS

### 22 TAC §295.5

The Texas State Board of Pharmacy adopts amendments to §295.5 concerning Pharmacist License or Renewal Fees. The amendments were published in the June 12, 2009, issue of the *Texas Register* (34 TexReg 3903). The amendments are adopted with changes to the proposed text as described below.

The Board was able to substantially reduce the proposed fee increase for all licensees, including reducing the proposed pharmacist initial and renewal fees from \$320 to \$281, based on the final appropriations that were approved by the Texas Legislature.

No comments were received.

The amendments are adopted under §§551.002, 554.051, 554.006, and 564.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §564.006 as authorizing the agency to adopt rules to establish reasonable and necessary fees to produce sufficient revenue to cover the cost of administering the Act. The Board interprets §564.051 as authorizing the agency to collect a surcharge to fund a program to aid impaired pharmacists and pharmacy students.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§295.5. *Pharmacist License or Renewal Fees.*

(a) Biennial Registration. The Texas State Board of Pharmacy shall require biennial renewal of all pharmacist licenses provided under the Pharmacy Act, §559.002.

(b) Initial License Fee.

(1) The fee for the initial license shall be \$281 for a two year registration and for processing the application and issuance of the pharmacist license as authorized by the Act, §554.006.

(2) In addition, the following fees shall be collected:

(A) \$13 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act, §564.051;

(B) \$10 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(C) \$5 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(3) New pharmacist licenses shall be assigned an expiration date and initial fee shall be prorated based on the assigned expiration date.

(c) Renewal Fee.

(1) The fee for biennial renewal of a pharmacist license shall be \$281 for processing the application and issuance of the pharmacist license as authorized by the Act, §554.006.

(2) In addition, the following fees shall be collected:

(A) \$13 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act, §564.051;

(B) \$10 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(C) \$2 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(d) Exemption from fee. The license of a pharmacist who has been licensed by the Texas State Board of Pharmacy for at least 50 years or who is at least 72 years old shall be renewed without payment of a fee provided such pharmacist is not actively practicing pharmacy. The renewal certificate of such pharmacist issued by the board shall reflect an inactive status. A person whose license is renewed pursuant to this subsection may not engage in the active practice of pharmacy without first paying the renewal fee as set out in subsection (b) of this section.

(e) Duplicate or Amended Certificates.

(1) The fee for issuance of an amended pharmacist's license renewal certificate shall be \$20.

(2) The fee for issuance of an amended license to practice pharmacy (wall certificate) only, or renewal certificate and wall certificate shall be \$35.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2009.

TRD-200903702

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: October 1, 2009

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For further information, please call: (512) 305-8028



## 22 TAC §295.8

The Texas State Board of Pharmacy adopts amendments to §295.8, concerning Continuing Education Requirements. The amendments were published in the June 12, 2009, issue of the *Texas Register* (34 TexReg 3903). The amendments are adopted with changes to the proposed text as noted below.

The amendments clarify that, for pharmacists, the ACPE number must indicate that the program is for pharmacists by the designation of the letter P, allow pharmacists to complete the same program once per licensure period, clarify the pediatric advanced life support certification is also approved for continuing education credit, allow pharmacists to receive 3 hours of continuing education credit for certification by the Board of Pharmaceutical Specialty, and allow pharmacists to receive credit for attending a program provided by the Texas State Board of Pharmacy or a course offered by the Texas State Board of Pharmacy.

Written comments were received from the American Safety and Health Institute recommending that programs equivalent to the American Heart Association Cardiopulmonary Resuscitation, Advanced Cardiac Life Support, and Pediatric Life Support be included. The Board agrees with this comment and included equivalent programs in the adopted rule. The Board also clarified that the designation of the letter P applies to continuing education credit received on or after January 1, 2009.

The amendments are adopted under §§551.002, 554.051, and 559.052 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the

Act. The Board interprets §559.052 as authorizing the agency to adopt rules for the approval of continuing education programs.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§295.8. *Continuing Education Requirements.*

(a) Authority and purpose.

(1) Authority. In accordance with §559.003 of the Texas Pharmacy Act, (Chapters 551 - 566, and 568 - 569, Occupations Code), all pharmacists must complete and report 30 contact hours (3.0 CEUs) of approved continuing education obtained during the previous license period in order to renew their license to practice pharmacy.

(2) Purpose. The board recognizes that the fundamental purpose of continuing education is to maintain and enhance the professional competency of pharmacists licensed to practice in Texas, for the protection of the health and welfare of the citizens of Texas.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) ACPE--Accreditation Council for Pharmacy Education.

(2) Act--The Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Occupations Code.

(3) Approved programs--Live programs, home study, and other mediated instruction delivered by an approved provider or a program specified by the board and listed as an approved program in subsection (e) of this section.

(4) Approved provider--An individual, institution, organization, association, corporation, or agency that is approved by the board and recognized by ACPE in accordance with its policy and procedures, as having met criteria indicative of the ability to provide quality continuing education programs.

(5) Board--The Texas State Board of Pharmacy.

(6) Certificate of completion--A certificate or other official document presented to a participant upon the successful completion of a continuing education program. Certificates presented by an ACPE approved provider must contain the following information:

(A) name of the participant;

(B) title and date of the program;

(C) name of the approved provider sponsoring or cosponsoring the program;

(D) number of contact hours and/or CEUs awarded;

(E) the assigned ACPE universal program number, and for CE obtained on or after January 1, 2009, a "P" designation indicating that the CE is targeted to pharmacists;

(F) a dated certifying signature of the approved provider; and

(G) the official ACPE logo.

(7) Contact hour--A unit of measure of educational credit which is equivalent to approximately 50 to 60 minutes of participation in an organized learning experience.

(8) Continuing education unit (CEU)--A unit of measure of education credit which is equivalent to 10 contact hours (i.e., one CEU = 10 contact hours).

(9) Credit hour--A unit of measurement for continuing education equal to 15 contact hours.

(10) Home-study and other mediated instruction--Continuing education activities that are not conducted as live programs, including audiotapes, videotapes, cable television, computer assisted instruction, journal articles, or monographs.

(11) Initial license period--The time period between the date of issuance of a pharmacist's license and the next expiration date.

(12) License period--The time period between consecutive expiration dates of a license.

(13) Live programs--On-site continuing education activities including lectures, symposia, live teleconferences, or workshops.

(14) Standardized pharmacy examination--The North American Pharmacy Licensing Examination (NAPLEX).

(c) Methods for obtaining continuing education. A pharmacist may satisfy the continuing education requirements by either:

(1) successfully completing the number of continuing education hours necessary to renew a license as specified in subsection (a)(1) of this section;

(2) successfully completing during the preceding license period, one credit hour for each year of their license period, which is a part of the professional degree program in a college of pharmacy the professional degree program of which has been accredited by ACPE; or

(3) taking and passing the standardized pharmacy examination (NAPLEX) during the preceding license period, which shall be equivalent to the number of continuing education hours necessary to renew a license as specified in subsection (a)(1) of this section.

(d) Reporting Requirements.

(1) Renewal of a pharmacist license. To renew a license to practice pharmacy, a pharmacist must report on the renewal application completion of the required number of contact hours of continuing education. The following is applicable to the reporting of continuing education contact hours.

(A) The renewal application issued by the board shall state the number of contact hours the pharmacist must complete in order to be eligible to renew the license.

(B) Any continuing education requirements which are imposed upon a pharmacist as a part of a board order or agreed board order shall be in addition to the requirements of this section.

(2) Failure to report completion of required continuing education. The license of a pharmacist who fails to report completion of the required number of continuing education contact hours shall not be renewed and the pharmacist shall not be issued a renewal certificate for the license period. A pharmacist who practices pharmacy without a current renewal certificate is subject to all penalties of practicing pharmacy without a license. The following is also applicable if a pharmacist fails to report completion of the required continuing education.

(A) The pharmacist's license shall not be renewed until such time as the pharmacist successfully completes the required continuing education and reports the completion to the board.

(B) The pharmacist shall be subject to the delinquent fees specified in the Act, §559.003.

(3) Extension of time for reporting. A pharmacist who has had a physical disability, illness, or other extenuating circumstances which prohibits the pharmacist from obtaining continuing education

credit during the preceding license period may be granted an extension of time to complete the continued education requirement. The following is applicable for this extension:

(A) The pharmacist shall submit a petition to the board with his/her license renewal application which contains:

(i) the name, address, and license number of the pharmacist;

(ii) statement of the reason for the request for extension which includes the dates the pharmacist was incapacitated; and

(iii) if the reason for the request for extension is health related, a statement from the attending physician(s) treating the pharmacist which includes the nature of the physical disability or illness and the dates the pharmacist was incapacitated.

(B) After review and approval of the petition, a pharmacist may be granted an extension of time to comply with the continuing education requirement which shall not exceed one license renewal period.

(C) An extension of time to complete continuing education credit does not relieve a pharmacist from the continuing education requirement during the current license period.

(D) If a petition for extension to the reporting period for continuing education is denied, the pharmacist shall:

(i) have 60 days to complete and report completion of the required continuing education requirements; and

(ii) be subject to the requirements of paragraph (2) of this subsection relating to failure to report completion of the required continuing education if the required continuing education is not completed and reported within the required 60-day time period.

(4) Exemptions from reporting requirements.

(A) All pharmacists licensed in Texas shall be exempt from the continuing education requirements during their initial license period.

(B) Pharmacists who have been licensed for 50 years are subject to the following.

(i) Pharmacists who are actively practicing pharmacy shall complete the continuing education requirements in order to renew their license.

(ii) Pharmacists who are not actively practicing pharmacy shall be granted an exemption to the reporting requirements for continuing education provided the pharmacists submit a completed renewal application for each license period which states that they are not practicing pharmacy. Upon submission of the completed renewal application, the pharmacist shall be issued a renewal certificate which states that pharmacist is inactive.

(iii) Pharmacists who wish to return to the practice of pharmacy after being exempted from the continuing education requirements as specified in clause (ii) of this subparagraph must:

(I) notify the board of their intent to actively practice pharmacy;

(II) pay the licensing fee as specified in §295.5 of this title (relating to Pharmacist License or Renewal Fees); and

(III) provide copies of completion certificates from approved continuing education programs as specified in subsection (e) of this section for 30 hours. Approved continuing education earned within two years prior to the licensee applying for the return

to active status may be applied toward the continuing education requirement for reactivation of the license but may not be counted toward subsequent renewal of the license.

(e) Approved Programs.

(1) Any program presented by an ACPE approved provider subject to the following conditions.

(A) Pharmacists may receive credit for the completion of the same ACPE course only once during a license period.

(B) Pharmacists who present approved ACPE continuing education programs may receive credit for the time expended during the actual presentation of the program. Pharmacists may receive credit for the same presentation only once during a license period.

(C) Proof of completion of an ACPE course shall be a certificate of completion as defined by subsection (b)(6) of this section.

(2) Courses which are part of a professional degree program or an advanced pharmacy degree program offered by a college of pharmacy which has a professional degree program accredited by ACPE.

(A) Pharmacists may receive credit for the completion of the same course only once during a license period.

(B) Pharmacists who teach these courses may receive credit towards their continuing education, but such credit may be received only once for teaching the same course during a license period.

(3) Basic cardiopulmonary resuscitation (CPR) courses which lead to CPR certification by the American Red Cross or the American Heart Association or its equivalent shall be recognized as approved programs. Pharmacists may receive credit for one contact hour (0.1 CEU) towards their continuing education requirement for completion of a CPR course only once during a license period. Proof of completion of a CPR course shall be the certificate issued by the American Red Cross or the American Heart Association or its equivalent.

(4) Advanced cardiovascular life support courses (ACLS) or pediatric advanced life support (PALS) courses which lead to initial ACLS or PALS certification by the American Heart Association or its equivalent shall be recognized as approved programs. Pharmacists may receive credit for twelve contact hours (1.2 CEUs) towards their continuing education requirement for completion of an ACLS or PALS course only once during a license period. Proof of completion of an ACLS or PALS course shall be the certificate issued by the American Heart Association or its equivalent.

(5) Advanced cardiovascular life support courses (ACLS) or pediatric advanced life support (PALS) courses which lead to ACLS or PALS recertification by the American Heart Association or its equivalent shall be recognized as approved programs. Pharmacists may receive credit for four contact hours (0.4 CEUs) towards their continuing education requirement for completion of an ACLS or PALS recertification course only once during a license period. Proof of completion of an ACLS or PALS recertification course shall be the certificate issued by the American Heart Association or its equivalent.

(6) Attendance at Texas State Board of Pharmacy Board Meetings shall be recognized for continuing education credit as follows.

(A) Pharmacists shall receive credit for three contact hours (0.3 CEUs) towards their continuing education requirement for attending a full, public board business meeting in its entirety.

(B) A maximum of six contact hours (0.6 CEUs) are allowed for attendance at a board meeting during a license period.

(C) Proof of attendance for a complete board meeting shall be a certificate issued by the Texas State Board of Pharmacy.

(7) Participation in a Texas State Board of Pharmacy appointed Task Force shall be recognized for continuing education credit as follows.

(A) Pharmacists shall receive credit for three contact hours (0.3 CEUs) towards their continuing education requirement for participating in a Texas State Board of Pharmacy appointed Task Force.

(B) Proof of participation for a Task Force shall be a certificate issued by the Texas State Board of Pharmacy.

(8) Completion of an Institute for Safe Medication Practices' (ISMP) Medication Safety Self Assessment for hospital pharmacies or for community/ambulatory pharmacies shall be recognized for continuing education credit as follows.

(A) Pharmacists shall receive credit for three contact hours (0.3 CEUs) towards their continuing education requirement for completion of an ISMP Medication Safety Self Assessment.

(B) Proof of completion of an ISMP Medication Safety Self Assessment shall be:

(i) a continuing education certificate provided by an ACPE approved provider for completion of an assessment; or

(ii) a document from ISMP showing completion of an assessment.

(9) Pharmacists shall receive credit for three contact hours (0.3 CEUs) toward their continuing education requirements for taking and successfully passing the initial Geriatric Pharmacy Practice certification examination administered by the Commission for Certification in Geriatric Pharmacy. Proof of successfully passing the examination shall be a certificate issued by the Commission for Certification in Geriatric Pharmacy.

(10) Pharmacist shall receive credit for three contact hours (0.3 CEUs) toward their continuing education requirements for taking and successfully passing an initial Board of Pharmaceutical Specialties certification examination administered by the Board of Pharmaceutical Specialties. Proof of successfully passing the examination shall be a certificate issued by the Board of Pharmaceutical Specialties.

(11) Attendance at programs presented by the Texas State Board of Pharmacy or courses offered by the Texas State Board of Pharmacy as follows:

(A) Pharmacists shall receive credit for the number of hours for the program or course as stated by the Texas State Board of Pharmacy.

(B) Proof of attendance at a program presented by the Texas State Board of Pharmacy or completion of a course offered by the Texas State Board of Pharmacy shall be a certificate issued by the Texas State Board of Pharmacy.

(12) Upon demonstrated need the board may establish criteria to approve programs presented by non-ACPE approved providers.

(f) Retention of continuing education records and audit of records by the board.

(1) Retention of records. Pharmacists are required to maintain certificates of completion of approved continuing education for three years from the date of reporting the contact hours on a license renewal application.



(2) Audit of records by the board. The board shall audit the records of pharmacists for verification of reported continuing education credit. The following is applicable for such audits.

(A) Upon written request, a pharmacist shall provide to the board documentation of proof for all continuing education contact hours reported during a specified license period(s). Failure to provide all requested records during the specified time period constitutes prima facie evidence of failure to keep and maintain records and shall subject the pharmacist to disciplinary action by the board.

(B) Credit for continuing education contact hours shall only be allowed for approved programs for which the pharmacist submits documentation of proof reflecting that the hours were completed during the specified license period(s). Any other reported hours shall be disallowed. A pharmacist who has received credit for continuing education contact hours disallowed during an audit shall be subject to disciplinary action.

(C) A pharmacist who submits false or fraudulent records to the board shall be subject to disciplinary action by the board.

(g) Reinstatement of pharmacist's license.

(1) Any person seeking reinstatement of a license which has been revoked or canceled by the board shall submit documentation of completion of the required number of continuing education contact hours for all years the license has been revoked or canceled prior to reinstatement of the license.

(2) Persons who seek reinstatement of a pharmacist license which has expired shall meet the requirements of §283.10 of this title (relating to Requirements for Application for a Pharmacist License Which Has Expired).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2009.

TRD-200903703

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8028



## CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

### 22 TAC §297.4

The Texas State Board of Pharmacy adopts amendments to §297.4, concerning Fees. The amendments were published in the June 12, 2009, issue of the *Texas Register* (34 TexReg 3905). The amendments raise pharmacy technician fees and implement a new pharmacy technician trainee fee based on increased expenses and are adopted with changes to the proposed text as described below.

The Board was able to substantially reduce the proposed fee increase for all licensees, including reducing the proposed pharmacy technician initial and renewal fee from \$112 to \$80,

and the proposed pharmacy technician trainee fee from \$61 to \$54, based on the final appropriations that were approved by the Texas Legislature.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.001(a) as authorizing the agency to adopt rules to administer and enforce the Act and rules adopted under the Act as well as enforce other laws relating to the practice of pharmacy.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§297.4. Fees.

(a) Pharmacy technician trainee. The fee for registration shall be \$54 and is composed of the following fees:

(1) \$46 for processing the application and issuance of the pharmacy technician trainee registration as authorized by the Act, §568.005;

(2) a \$3 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(3) \$5 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(b) Pharmacy technician.

(1) Biennial Registration. The board shall require biennial renewal of all pharmacy technician registrations provided under Chapter 568 of the Act.

(2) Initial Registration Fee.

(A) The fee for initial registration shall be \$83 for a two year registration and is composed of the following fees:

(i) \$75 for processing the application and issuance of the pharmacy technician registration as authorized by the Act, §568.005;

(ii) a \$3 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(iii) \$5 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(B) The initial registration fee shall be prorated based on the assigned expiration date.

(3) Renewal Fee. The fee for biennial renewal of a pharmacy technician registration shall be \$80 and is composed of the following:

(A) \$75 for processing the application and issuance of the pharmacy technician registration as authorized by the Act, §568.005;

(B) a \$3 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(C) \$2 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(c) Duplicate or Amended Certificates. The fee for issuance of a duplicate or amended pharmacy technician trainee registration certificate or pharmacy technician registration renewal certificate shall be \$20.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2009.

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Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8028



## CHAPTER 303. DESTRUCTION OF DANGEROUS DRUGS AND CONTROLLED SUBSTANCES

### 22 TAC §303.1, §303.2

The Texas State Board of Pharmacy adopts amendments to §303.1, concerning Destruction of Dispensed Drugs and §303.2, concerning Disposal of Stock Prescription Drugs. The amendments were published in the June 12, 2009, issue of the *Texas Register* (34 TexReg 3906). The amendments to §303.1 are adopted with changes to the proposed text and §303.2 is adopted without changes. The amendments clarify that only dangerous drugs that have been previously dispensed to a patient may be accepted by a pharmacy and destroyed based on DEA requirements and the amendments remove references to tripeleennamine which is no longer available. The changes clarify that the pharmacist accepting returned prescription drugs must be in a pharmacy and allow for the return of controlled substances if allowed by federal law.

No comments were received.

The amendments are adopted under §551.002, and §554.051, of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

#### §303.1. Destruction of Dispensed Drugs.

(a) Drugs dispensed to patients in health care facilities or institutions.

(1) Destruction by the consultant pharmacist. The consultant pharmacist, if in good standing with the Texas State Board of Pharmacy, is authorized to destroy dangerous drugs and controlled substances dispensed to patients in health care facilities or institutions, providing the following conditions are met.

(A) A written agreement exists between the facility and the consultant pharmacist.

(B) The drugs are inventoried and such inventory is verified by the consultant pharmacist. The following information shall be included on this inventory:

- (i) name and address of the facility or institution;
- (ii) name and pharmacist license number of the consultant pharmacist;
- (iii) date of drug destruction;
- (iv) date the prescription was dispensed;
- (v) unique identification number assigned to the prescription by the pharmacy;
- (vi) name of dispensing pharmacy;
- (vii) name, strength, and quantity of drug;
- (viii) signature of consultant pharmacist destroying drugs;
- (ix) signature of the witness(es); and
- (x) method of destruction.

(C) The signature of the consultant pharmacist and witness(es) to the destruction and the method of destruction specified in subparagraph (B) of this paragraph may be on a cover sheet attached to the inventory and not on each individual inventory sheet, provided the cover sheet contains a statement indicating the number of inventory pages that are attached and each of the attached pages are initialed by the consultant pharmacist and witness(es).

(D) The drugs are destroyed in a manner to render the drugs unfit for human consumption and disposed of in compliance with all applicable state and federal requirements.

(E) The actual destruction of the drugs is witnessed by one of the following:

- (i) a commissioned peace officer;
- (ii) an agent of the Texas State Board of Pharmacy;
- (iii) an agent of the Texas Health and Human Services Commission, authorized by the Texas State Board of Pharmacy to destroy drugs;
- (iv) an agent of the Texas Department of State Health Services, authorized by the Texas State Board of Pharmacy to destroy drugs; or
- (v) any two individuals working in the following capacities at the facility:
  - (I) facility administrator;
  - (II) director of nursing;
  - (III) acting director of nursing; or
  - (IV) licensed nurse.

(F) If the actual destruction of the drugs is conducted at a location other than the facility or institution, the consultant pharmacist and witness(es) shall retrieve the drugs from the facility or institution, transport, and destroy the drugs at such other location.

(2) Destruction by a waste disposal service. A consultant pharmacist may utilize a waste disposal service to destroy dangerous drugs and controlled substances dispensed to patients in health care facilities or institutions, provided the following conditions are met.

(A) The waste disposal service is in compliance with applicable rules of the Texas Commission on Environmental Quality

and United States Environmental Protection Agency relating to waste disposal.

(B) The drugs are inventoried and such inventory is verified by the consultant pharmacist prior to placing the drugs in an appropriate container, and sealing the container. The following information must be included on this inventory:

- (i) name and address of the facility or institution;
- (ii) name and pharmacist license number of the consultant pharmacist;
- (iii) date of packaging and sealing of the container;
- (iv) date the prescription was dispensed;
- (v) unique identification number assigned to the prescription by the pharmacy;
- (vi) name of dispensing pharmacy;
- (vii) name, strength, and quantity of drug;
- (viii) signature of consultant pharmacist packaging and sealing the container; and
- (ix) signature of the witness(es).

(C) The consultant pharmacist seals the container of drugs in the presence of the facility administrator and the director of nursing or one of the other witnesses listed in paragraph (1)(D) of this subsection as follows:

- (i) tamper resistant tape is placed on the container in such a manner that any attempt to reopen the container will result in the breaking of the tape; and
- (ii) the signature of the consultant pharmacist is placed over this tape seal.

(D) The sealed container is maintained in a secure area at the facility or institution until transferred to the waste disposal service by the consultant pharmacist, facility administrator, director of nursing, or acting director of nursing.

(E) A record of the transfer to the waste disposal service is maintained and attached to the inventory of drugs specified in subparagraph (B) of this paragraph. Such record shall contain the following information:

- (i) date of the transfer;
- (ii) signature of the person who transferred the drugs to the waste disposal service;
- (iii) name and address of the waste disposal service; and
- (iv) signature of the employee of the waste disposal service who receives the container.

(F) The waste disposal service shall provide the facility with proof of destruction of the sealed container. Such proof of destruction shall contain the date, location, and method of destruction of the container and shall be attached to the inventory of drugs specified in subparagraph (B) of this paragraph.

(3) Record retention. All records required in this subsection shall be maintained by the consultant pharmacist at the health care facility or institution for two years from the date of destruction.

(b) Dangerous drugs returned to a pharmacy. A pharmacist in a pharmacy may accept and destroy dangerous drugs that have been previously dispensed to a patient and returned to a pharmacy by the pa-

tient or an agent of the patient. However, a pharmacist may not accept controlled substances that have been previously dispensed to a patient unless allowed by federal laws of the Drug Enforcement Administration. The following procedures shall be followed in destroying dangerous drugs.

(1) The dangerous drugs shall be destroyed in a manner to render the drugs unfit for human consumption and disposed of in compliance with all applicable state and federal requirements.

(2) Documentation shall be maintained that includes the following information:

- (A) name and address of the dispensing pharmacy;
- (B) unique identification number assigned to the prescription, if available;
- (C) name and strength of the dangerous drug; and
- (D) signature of the pharmacist.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8028



## PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

### CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING RULES

#### SUBCHAPTER A. LICENSING

##### 22 TAC §851.80

The Texas Board of Professional Geoscientists (TBPG or Board) adopts an amendment to 22 TAC §851.80, regarding fees. It is adopted without changes to the proposed text as published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4623) and will not be republished.

The adopted amendment raises licensing fees and annual renewal fees for licensed individuals and registered firms. The Board's mission is to protect the public health, safety, welfare and the state's natural resources and to insure that the individuals and firms it regulates meet their professional obligations. If the Board simply maintains its current budget, the Board has determined that it cannot effectively function, much less accomplish its mission. The Board feels strongly that to accomplish its mission it must increase enforcement activities, which means adding staff. The fee increase will supplement the costs associated with adding additional employees within the agency, ramping up the enforcement division, and upgrading an outdated licensing database. The public benefit will be enhancement of the

professional practice of geoscience by ensuring that only qualified and licensed persons and entities practice geoscience before the public.

Comments on the proposed amendment were received from thirty-seven individuals: thirty of those wrote in opposition to the amendment; two individuals submitted duplicate comments to different individuals; another two individuals did not specify a stand on the amendment; and three individuals were in favor of the amendment. In addition, before the amendment had been proposed by the Board, 356 automated e-mails had been received by the Board. Those 356 e-mail submissions, facilitated by the Texas Association of Professional Geoscientists, and submitted by its members, were identical in format and substance, and conveyed a general disagreement with the license fee increase. The Board's responses below also address the concerns raised by those e-mails.

Eight comments mentioned that the fee increase will cause the agency to lose licensees, thereby causing a net loss of revenue. The Board disagrees with this statement because such statements are speculative; such information cannot be accurately predicted at this time. The Board understands the concern, but does not feel that the impact will be significant.

Three individuals specifically stated they would not renew their license. The Board has noted these comments, and respectfully responds by stating that the Texas Geoscience Practice Act, Texas Occupations Code Chapter 1002, specifically requires that if you perform or offer to perform geoscience services before the public in Texas and are not exempt from licensure, you must be licensed by the Board.

Eleven comments were against the amendment in general. The Board appreciates this input, and it is duly noted.

Eight comments mentioned that Texas geoscience licensure fees are the highest in the nation. One added that the fees are a barrier to some for licensure. The Board agrees that Texas Geoscience licensure fees may be higher than other states that license geoscientists. However, the Board notes that the licensing fees for Professional Geoscientists in Texas are less than many other professional licenses in Texas.

Six comments stated that the licensees pay more money than the agency uses. The Board agrees with these comments; this issue is not uncommon for State agencies. However, TBPG does not control the legislative appropriations process.

Thirteen comments mentioned that the fee increase places an undue burden on licensees specifically related to the bad economic conditions: some licensees are out of work or retired and cannot afford the increased fees; some licensees are facing decreases in pay; many companies are having to cut their budgets; employers are no longer paying for the licenses; and that adding staff in this economy is not acceptable. Two comments call this a punitive tax; that it is another example of government waste; and that Texas Professional Geoscientists already contribute more to the Texas economy than other industries. The Board acknowledges that these are difficult times, and this is a difficult situation for the agency to be in. However, the Board recognizes its responsibility to accomplish its mission to protect public health, safety, welfare and the state's natural resources by ensuring that only qualified persons carry out the public practice of geoscience; raising fees will help to ensure that outcome. The Board disagrees that the fee increase is evidence of government waste: TBPG does not control how other state agencies

or branches of government function, but can only ensure that it functions as efficiently and effectively as possible. Anyone is invited to attend any of the Board meetings to see how the Board operates. The Board also disagrees with the comment that licensure is like a punitive tax: the Board's view is that licensure is part of the cost of doing business. Additionally, regarding the comments about TBPG adding staff not being acceptable, the Board respectfully disagrees. In order to fulfill its commission, it needs the funds to operate effectively, as mentioned previously. Regarding the comment that Texas Professional Geoscientists already contribute more to the Texas economy than other industries, the Board respectfully disagrees. It has noted that licensing fees for Professional Geoscientists in Texas are less than many other professional licenses in Texas.

Four comments stated that the Board should reorganize or cut their budget so as not to raise fees. This idea is inconsistent with protecting public health, safety, welfare and the state's natural resources. The Board feels strongly that to accomplish its mission it must increase its enforcement activities, which means adding staff. If TBPG simply maintains its budget, it could not effectively function, much less accomplish its mission. Additionally, the Board periodically evaluates staff function and performance.

One comment stated that the fee increase makes it difficult for independent business operators, and that if the Board could change the terminology "sole-proprietor" to "sole business operator" it could allow corporations operated by a single Professional Geoscientist the same benefits as sole-proprietors. The Board has duly noted this comment, is aware of the issue, and has assigned a committee to examine this issue further.

One comment mentioned that fees over \$200 are unjustified. The Board respectfully disagrees. Fees are a function of the legislative appropriations and the size of the licensee base. Further, licensing fees for Professional Geoscientists in Texas are less than many other professional licenses in Texas.

Two comments specifically mentioned that for those not required to be licensed, licensure does not provide enough value to keep. The Board disagrees with this assessment. The Board feels that the current and future value of the Professional Geoscientist license is significant.

One comment suggested that the Board establish a firm registration fee scale tied to the number of Professional Geoscientists in the firm. The Board believes that such a plan would be too difficult to implement and enforce. However, the Board welcomes further dialogue with this commenter as well as all of the other individuals who have submitted comments to the Board.

This amendment is adopted under the Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce rules consistent with the Texas Geoscience Practice Act and necessary for the performance of its duties, and §1002.152, which authorizes the Board to set reasonable and necessary fees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2009.  
TRD-200903651

## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 31. NUTRITION SERVICES SUBCHAPTER C. SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

##### 25 TAC §31.25, §31.37

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §31.25 and §31.37 concerning the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). The amendment to §31.37 is adopted with a change to the proposed text as published in the May 29, 2009, issue of the *Texas Register* (34 TexReg 3341). The amendment to §31.25 is adopted without changes, and will not be republished.

##### BACKGROUND AND PURPOSE

Under federal enabling legislation, the WIC Program is funded entirely by a combination of federal grant funds and by rebates from manufacturers of infant formula and infant cereal that can only be expended to defray WIC food costs. The United States Department of Agriculture (USDA) awards federal grant funds to the department to administer the program, provided the department does so in accordance with federal law and regulations and in accordance with the department's annual submission of a state plan approved by USDA. USDA deems the following types of changes to be substantive amendments to the state plan that require federal approval: rule or policy changes initiated by legislation, USDA, or the state agency; changes affecting client or vendor services and benefits; changes in the monitoring/oversight of vendors and local agencies; any other operational changes aimed at improving or enhancing program delivery or accountability; and changes in related state procedures.

Revisions to these rules are adopted primarily to comply with new federal regulations governing the WIC program at 7 Code of Federal Regulations (CFR), Part 246, and to improve administrative efficiency and effectiveness.

##### SECTION-BY-SECTION SUMMARY

The amendment to §31.25 extends the certification of the WIC eligibility time period for breastfeeding women from six months up to one year in compliance with 7 CFR §246.7. The one-year eligibility time period will save both the client and clinic staff time by eliminating the necessity for a second in-person certification interview each six months.

The amendment to §31.37 concerns the selection of allowable foods for the WIC program, which add new foods to the current foods list issued to WIC recipients in compliance with 7 CFR §246.10. In addition, the process for informing food manufacturers about food changes is amended to eliminate detailed description of food types that could become out of date.

##### COMMENTS

The department, on behalf of the commission, has reviewed and prepared a response to the one comment received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenter was an individual who was in favor of the rules and suggested a recommendation for change as follows.

Comment: Regarding the exclusion of eggs in the list of allowable foods in proposed §31.37 concerning "Selection of Allowable WIC Program Supplemental Foods," the commenter pointed out that eggs are still an allowable WIC food under USDA rules at 7 CFR §246.10(e)(10). The commenter also pointed out that, although eggs should be eaten in moderation like other foods, eggs can be beneficial and recommended a website for information on eggs at [http://health.state.tn.us/WIC/PDFs/Egg\\_Recipes.pdf](http://health.state.tn.us/WIC/PDFs/Egg_Recipes.pdf). The commenter requested that §31.37 be amended to add "eggs" as an allowable food.

Response: The commission agrees and the word "eggs" has been added to the list of allowable foods in §31.37(l).

##### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

##### STATUTORY AUTHORITY

The amendments are adopted under Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

*§31.37. Selection of Allowable WIC Program Supplemental Foods.*

(a) Criteria for approving products for inclusion in the WIC Program food package are based on federal regulations, packaging, cost, cultural acceptability, and nutritive value.

(b) A product shall meet the federal regulations governing the WIC Program food package in order to be considered for approval through the WIC Program.

(c) The state agency may restrict the number of brands and types of any products in order to contain the cost of the food package and minimize the confusion for WIC participants. The state agency is not obligated to authorize every available food that meets the federal requirements.

(d) The state agency shall review the WIC Program list of allowable foods annually to determine the need for adding or deleting food products. If the state agency determines that the list of allowable foods should be changed, the state agency shall notify the appropriate manufacturers of that intent.

(e) The state agency may restrict the size of packages and types of containers of any products for any food type including limiting pack-

age size and container type within brands of products in order to contain the cost of the food package and minimize the confusion for WIC participant.

(f) A product for any food type shall be available for retail purchase in Texas on or before the effective date of the approved food list or it will not be considered by the state agency for authorization.

(g) The product form and marketing approach for any product for any food type shall be consistent with the promotion of good nutrition and education.

(h) The state agency reserves the right to solicit rebates for any eligible foods from manufacturers through a competitive bid process.

(i) The state agency reserves the right to determine the numbers and types of foods within a food type to be authorized.

(j) In determining the number of brands and types of any products to be approved, the state agency may consider consumer, cultural, and/or ethnic acceptability, and suitability for children.

(k) Products having similar names and package designs shall not be approved if the similarity in name and/or packaging would cause substantial confusion for vendors and/or participants.

(l) Allowable foods may include: milk; cheese; eggs; tofu; soy-based beverages; breakfast cereal; juice; beans; peas; lentils; peanut butter; tuna; salmon; mackerel; sardines; fruits; vegetables; whole wheat bread; whole grain bread; brown rice; bulgur; oatmeal; whole grain barley; corn or whole wheat tortillas; infant cereal; infant fruits; infant vegetables; infant meats; infant formula; exempt infant formula; and WIC-eligible medical foods.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2009.

TRD-200903699

Lisa Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 458-7111 x6972



## **TITLE 34. PUBLIC FINANCE**

### **PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS**

#### **CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS**

##### **SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)**

###### **34 TAC §41.1, §41.7**

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts amendments to the following rules for TRS-Care, the health benefits program for TRS retirees administered by TRS, as trustee: §41.1 relating to initial enrollment periods for coverage under TRS-Care; and §41.7 relating to the effective date of coverage under TRS-Care. The Board adopts

amended §41.1 with changes to the proposed text as published in the July 17, 2009, issue of the *Texas Register* (34 TexReg 4723). The Board adopts amended §41.7 without changes to the proposed text as published in the July 17, 2009, issue of the *Texas Register* (34 TexReg 4723). The amended sections are adopted mainly to address a new, extended initial enrollment period for retirees.

Changes to §1575.161 of the Insurance Code, made pursuant to House Bill 1191, 81st Legislature, Regular Session (2009) ("H.B. 1191"), entitles retirees who are eligible for coverage under TRS-Care to select coverage beginning on any date that is on or after the date the person retires and on or before the 90th day after the retirement date. In light of the above, TRS adopts substantive amendments to §41.1 to reflect that 90-day enrollment period, and substantive amendments to §41.7 to address the ability of retirees to change coverage tiers within the initial enrollment period. The substantive adopted amendments to §41.1 are located in the newly-designated subsections (a) and (b). Newly-designated subsection (a) provides that the initial enrollment period in TRS-Care for TRS retirees who take service retirement and who are eligible to enroll in TRS-Care at the time of retirement expires at the end of the later of the last day of the month that is three (3) consecutive calendar months, but in no event less than 90 days, after their effective retirement date, or the last day of the month this is three (3) consecutive calendar months following the last day of the month in which their election to retire is received by TRS. Newly-designated subsection (b) provides that the initial enrollment period in TRS-Care for eligible TRS disability retirees expires at the end of the last day of the month that is three (3) consecutive calendar months, but in no event less than 90 days, after the date that the disability retirement is approved by the TRS Medical Board. A substantive adopted amendment to §41.7 is located in newly-designated subsection (b). Newly-designated subsection (b) provides that a TRS member who takes a service or disability retirement and enrolls in coverage during his or her initial enrollment period may, at any time during his or her initial enrollment period, make changes to his or her coverage elections. The effective date of coverage for the new elections is the first day of the month following receipt by TRS-Care of the application requesting the change in coverage.

Non-substantive amendments to §41.1 are adopted to delete obsolete language setting forth different initial enrollment periods for those retirees retiring before September 1, 2004, and those retirees retiring after September 1, 2004. A non-substantive amendment to §41.7 is adopted. Newly-designated subsection (c) of §41.7 permits retirees to defer the effective date of coverage under TRS-Care up to the first day of the third month immediately following the month after the effective date of retirement. The adopted non-substantive amendment clarifies that this deferral period runs concurrent with, and does not extend, the enrollment periods set forth in §41.1. Subsections within both §41.1 and §41.7 have been re-designated as required by the adopted amendments in each section.

The adopted changes to the proposed text of §41.1 as published in the *Texas Register* clarify program references and applicable time periods. In subsection (a) of amended §41.1, introductory identifications of TRS-Care and TRS are restored. Those identifications serve as the basis for the use of "TRS-Care" and "TRS" in place of "the Texas Public School Retired Employees Group Benefits Act" and "Teacher Retirement System of Texas," respectively, throughout Chapter 41 of Title 34, Texas Administrative Code. Additionally, the qualifying phrase "but in no event

less than 90 days" was inadvertently omitted from the second of the two possible ending dates for the initial TRS-Care enrollment period for service retirees. As explained above, that qualification may be necessary to comply with the 90-day enrollment period required by House Bill 1191 when a service retiree's 3-month initial enrollment period includes the month of February. Therefore, that qualifying phrase is inserted in the appropriate place in subsection (a)(2) of amended §41.1. The additional changes to §41.1 as published do not require republication of the proposed rule.

No comments were received regarding the proposed amendments to §41.1 or §41.7.

**Statutory Authority:** The amendments to §41.1 and §41.7 are adopted under the authority of §1575.052, Insurance Code, which authorizes the Board to adopt rules it considers necessary to implement and administer the TRS-Care program.

*§41.1. Initial Enrollment Periods for the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act (TRS-Care).*

(a) The initial enrollment period in the health benefits program under the Texas Public School Retired Employees Group Benefits Act (TRS-Care) for eligible Teacher Retirement System of Texas (TRS) retirees who take a service retirement and who are eligible to enroll in TRS-Care at the time of retirement expires at the end of the later of:

(1) the last day of the month that is 3 consecutive calendar months, but in no event less than 90 days, after their effective retirement date; or

(2) the last day of the month that is 3 consecutive calendar months, but in no event less than 90 days, following the last day of the month in which their election to retire is received by TRS.

(b) The initial enrollment period in TRS-Care for eligible TRS disability retirees expires at the end of the last day of the month that is 3 consecutive calendar months, but in no event less than 90 days, after the date that the disability retirement is approved by the TRS Medical Board.

(c) The initial enrollment period in TRS-Care for a surviving spouse and a surviving dependent child of an eligible retiree expires at the end of the later of:

(1) the 31st day after the end of the month in which the eligible retiree died; or

(2) the 31st day after the date of the notice of eligibility that is sent to the surviving spouse or the surviving dependent child at the individual's last known address, as shown in the TRS-Care records.

(d) The initial enrollment period for a surviving spouse of a deceased active member and for a surviving dependent child, as both are defined by §1575.003, Insurance Code, expires at the end of the later of:

(1) the 31st day after the end of the month in which the active member died; or

(2) the 31st day following the date of the notice of opportunity to enroll that is sent to the surviving spouse or the surviving dependent child at the individual's last known address, as shown in the TRS-Care records.

(e) Notwithstanding the other provisions of this section:

(1) A retiree may enroll a new spouse within 31 days of the date on which the retiree marries;

(2) A retiree or surviving spouse may enroll a child who becomes a dependent as defined by §1575.003, Insurance Code, within 31 days after the date on which the child becomes a dependent eligible for coverage under TRS-Care; and

(3) A participant shall be entitled to all applicable COBRA rights under the Federal Public Health Service Act.

(f) If a retiree or surviving spouse fails to enroll a newly eligible spouse or dependent child within the time periods set out in subsection (e) of this section, the retiree or surviving spouse will not be able to enroll the spouse or dependent child in TRS-Care until a subsequent enrollment period.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 21, 2009.

TRD-200903669

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

Effective date: September 10, 2009

Proposal publication date: July 17, 2009

For further information, please call: (512) 542-6438

## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE**

#### **CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS**

##### **37 TAC §163.21**

The Texas Board of Criminal Justice adopts the amendments to §163.21, concerning Administration, without changes to the proposed text, as published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4494) and will not be republished.

The amendments are necessary to add clarity and conform to state law.

No comments were received regarding the proposed amendments.

The amendments are adopted under Texas Government Code, §509.003.

Cross Reference to Statutes: Texas Government Code, §§76.002, 76.005 and 76.016.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 21, 2009.

TRD-200903680

Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Effective date: September 10, 2009  
Proposal publication date: July 3, 2009  
For further information, please call: (936) 437-6003



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS**

#### **CHAPTER 364. REQUIREMENTS FOR LICENSURE**

##### **40 TAC §364.1**

The Texas Board of Occupational Therapy Examiners adopts an amendment to §364.1, concerning Requirements for Licensure, without changes to the proposed text as published in the June 12, 2009, issue of the *Texas Register* (34 TexReg 3914) and will not be republished.

The amendment adds language to §364.1 to restore the use of occupational therapist (OT) and occupational therapy assistant (OTA) as consistent with the Occupational Therapy Practice Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Occupational Therapy Act (Act), Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out the duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this amended section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 18, 2009.

TRD-200903610  
John Maline  
Executive Director  
Texas Board of Occupational Therapy Examiners  
Effective date: September 7, 2009  
Proposal publication date: June 12, 2009  
For further information, please call: (512) 305-6900



##### **40 TAC §364.3**

The Texas Board of Occupational Therapy Examiners adopts an amendment to §364.3, concerning Temporary License, without changes to the proposed text as published in the June 12, 2009,

issue of the *Texas Register* (34 TexReg 3915) and will not be republished.

The amendment adds language to §364.3 to restore the use of occupational therapist (OT) and occupational therapy assistant (OTA) as consistent with the Occupational Therapy Practice Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Occupational Therapy Act (Act), Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out the duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this amended section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 18, 2009.

TRD-200903611  
John Maline  
Executive Director  
Texas Board of Occupational Therapy Examiners  
Effective date: September 7, 2009  
Proposal publication date: June 12, 2009  
For further information, please call: (512) 305-6900



#### **CHAPTER 369. DISPLAY OF LICENSES**

##### **40 TAC §369.3**

The Texas Board of Occupational Therapy Examiners adopts an amendment to §369.3, concerning Use of Titles, without changes to the proposed text as published in the June 12, 2009, issue of the *Texas Register* (34 TexReg 3915) and will not be republished.

The amendment adds language to §369.3 to restore the use of occupational therapist (OT) and occupational therapy assistant (OTA) as consistent with the Occupational Therapy Practice Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Occupational Therapy Act (Act), Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out the duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this amended section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 18, 2009.

TRD-200903612



John Maline  
Executive Director  
Texas Board of Occupational Therapy Examiners  
Effective date: September 7, 2009  
Proposal publication date: June 12, 2009  
For further information, please call: (512) 305-6900



## CHAPTER 371. INACTIVE AND RETIRED STATUS

### 40 TAC §371.2

The Texas Board of Occupational Therapy Examiners adopts an amendment to §371.2, concerning Retired Status, without changes to the proposed text as published in the June 12, 2009, issue of the *Texas Register* (34 TexReg 3916) and will not be republished.

The amendment adds language to §371.2 to restore the use of occupational therapist (OT) and occupational therapy assistant (OTA) as consistent with the Occupational Therapy Practice Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Occupational Therapy Act (Act), Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out the duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this amended section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 18, 2009.

TRD-200903613  
John Maline  
Executive Director  
Texas Board of Occupational Therapy Examiners  
Effective date: September 7, 2009  
Proposal publication date: June 12, 2009  
For further information, please call: (512) 305-6900



## CHAPTER 372. PROVISION OF SERVICES

### 40 TAC §372.1

The Texas Board of Occupational Therapy Examiners adopts an amendment to §372.1, concerning Provision of Services, without changes to the proposed text as published in the June 12, 2009, issue of the *Texas Register* (34 TexReg 3916) and will not be republished.

The amendment adds language to §372.1 to restore the use of occupational therapist (OT) and occupational therapy assistant (OTA) as consistent with the Occupational Therapy Practice Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Occupational Therapy Act (Act), Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out the duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this amended section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 18, 2009.

TRD-200903614  
John Maline  
Executive Director  
Texas Board of Occupational Therapy Examiners  
Effective date: September 7, 2009  
Proposal publication date: June 12, 2009  
For further information, please call: (512) 305-6900



## CHAPTER 373. SUPERVISION

### 40 TAC §373.1

The Texas Board of Occupational Therapy Examiners adopts an amendment to §373.1, concerning Supervision of Non-Licensed Personnel, without changes to the proposed text as published in the June 12, 2009, issue of the *Texas Register* (34 TexReg 3917) and will not be republished.

The amendment adds language to §373.1 to restore the use of occupational therapist (OT) and occupational therapy assistant (OTA) as consistent with the Occupational Therapy Practice Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Occupational Therapy Act (Act), Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out the duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this amended section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 18, 2009.

TRD-200903615  
John Maline  
Executive Director  
Texas Board of Occupational Therapy Examiners  
Effective date: September 7, 2009  
Proposal publication date: June 12, 2009  
For further information, please call: (512) 305-6900



### 40 TAC §373.2

The Texas Board of Occupational Therapy Examiners adopts an amendment to §373.2, concerning Supervision of a Temporary Licensee, without changes to the proposed text as published in the June 12, 2009, issue of the *Texas Register* (34 TexReg 3918) and will not be republished.

The amendment adds language to §373.2 to restore the use of occupational therapist (OT) and occupational therapy assistant (OTA) as consistent with the Occupational Therapy Practice Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Occupational Therapy Act (Act), Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out the duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this amended section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 18, 2009.

TRD-200903616

John Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: September 7, 2009

Proposal publication date: June 12, 2009

For further information, please call: (512) 305-6900



## CHAPTER 376. REGISTRATION OF FACILITIES

### 40 TAC §§376.1, 376.3, 376.4

The Texas Board of Occupational Therapy Examiners adopts amendments to §376.1, concerning Definitions; §376.3, concerning Requirements for Registration Application; and §376.4, concerning Requirements for Registered Facilities, without changes to the proposed text as published in the June 12, 2009, issue of the *Texas Register* (34 TexReg 3918) and will not be republished.

The amendments add language to §§376.1, 376.3, and 376.4 to restore the use of occupational therapist (OT) and occupational therapy assistant (OTA) as consistent with the Occupational Therapy Practice Act.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Occupational Therapy Act (Act), Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Ex-

aminers with the authority to adopt rules consistent with this Act to carry out the duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this amended section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 18, 2009.

TRD-200903617

John Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: September 7, 2009

Proposal publication date: June 12, 2009

For further information, please call: (512) 305-6900



### 40 TAC §376.6

The Texas Board of Occupational Therapy Examiners (TBOTE) adopts an amendment to §376.6, concerning Renewal of Registration Application, without changes to the proposed text as published in the June 12, 2009, issue of the *Texas Register* (34 TexReg 3920) and will not be republished.

The amendment adds language to §376.6 to restore the use of occupational therapist (OT) and occupational therapy assistant (OTA) as consistent with the Occupational Therapy Practice Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Occupational Therapy Act (Act), Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out the duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this amended section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 18, 2009.

TRD-200903621

John Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: September 7, 2009

Proposal publication date: June 12, 2009

For further information, please call: (512) 305-6900



# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

State Board for Educator Certification

### Title 19, Part 7

The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 245, Certification of Educators from Other Countries, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 245 continue to exist. The comment period begins September 4, 2009, and ends following receipt of public comments on the rule review of 19 TAC Chapter 245 at the next regularly scheduled SBEC meeting to be held on October 9, 2009.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to [sbecrules@tea.state.tx.us](mailto:sbecrules@tea.state.tx.us) or faxed to (512) 463-0028. Comments should be identified as "SBEC Rule Review."

TRD-200903715

Karen Loonam

Deputy Associate Commissioner, Educator Quality and Standards,  
Texas Education Agency

State Board for Educator Certification

Filed: August 24, 2009



Texas Facilities Commission

### Title 1, Part 5

In accordance with Texas Government Code, §2001.039, the Texas Facilities Commission (the Commission) proposes to review its administrative rules contained in Texas Administrative Code, Title 1, Part 5, Chapter 116, entitled Property Management Division.

Chapter 116, entitled *Property Management Division*, relates in Subchapter A to the Commission's duties and functions concerning management of State-owned property, including definitions; responsibilities of occupying agencies; maintenance, repairs, and modifications; procedures governing maintenance service and minor construction contracts; building operations; temporary use of property on the Commission's inventory; applicability of national fire codes; parking; air quality; conference rooms; signage; delegated authority for facilities management; security; and mandatory energy-savings devices for vending machines. Subchapter B of Chapter 116 relates to the

mandatory paper recycling program, including authority, definitions, goals, designation of a recycling coordinator, performance measures, paper recycling training, delegation of responsibility, guidelines and procedures for collecting and recycling waste paper, and interagency agreements for paper recycling services.

As required by Texas Government Code §2001.039, the Commission conducts this review to determine whether the statutory authority and the business reasons for Chapter 116 continue to exist.

Comments on the proposals may be submitted to Kay Molina, General Counsel, Texas Facilities Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via electronic mail to [rulescomments@tfc.state.tx.us](mailto:rulescomments@tfc.state.tx.us) and should state "Proposed Rule Review Chapter 116" in the subject line of e-mailed comments. Comments must be received no later than thirty (30) days from the date of publication of the proposal in the *Texas Register*.

TRD-200903660

Kay Molina

General Counsel

Texas Facilities Commission

Filed: August 20, 2009



Teacher Retirement System of Texas

### Title 34, Part 3

The Teacher Retirement System of Texas (TRS) files this notice of intention to review and to consider for readoption, amendment, or repeal of §§53.1 - 53.19, Chapter 53 (Certification by Companies Offering Qualified Investment Products), Title 34, Part 3, of the Texas Administrative Code. This review and consideration is being conducted in accordance with §2001.039 of the Texas Government Code. The review will include, at a minimum, an assessment as to whether the reasons for adopting or readopting the rules in Chapter 53 continue to exist. With this proposed rule review, TRS has also contemporaneously filed a Rule Review Plan for Chapter 53, which will be made available on the Secretary of State's Web site at [www.sos.state.tx.us](http://www.sos.state.tx.us).

Written comments pertaining to this proposed rule review must be submitted to Ronnie Jung, Executive Director, Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701. The deadline for written comments is 30 days after publication in the *Texas Register*. In addition, the public will be given an opportunity to comment on the proposed rule review at the October 8-9, 2009 meeting of the TRS Board of Trustees.

Any changes to these rules proposed because of the rule review will be published in the Proposed Rule section of the *Texas Register*. The

proposed rule changes will be open for public comment before final adoption or repeal by TRS in accordance with the requirements of the Administrative Procedure Act, Chapter 2001 of the Texas Government Code.

TRD-200903671

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

Filed: August 21, 2009



## Adopted Rule Reviews

### Texas Department of Criminal Justice

#### Title 37, Part 6

The Texas Board of Criminal Justice (Board) has completed its review of §163.21, concerning Administration, in accordance with the requirements of Texas Government Code §2001.039. The Board has determined the reasons for initially adopting §163.21 continue to exist, and it readopts the section.

Notice of the review was published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4549). No comments were received as a result of that notice.

As a result of the rule review, the Texas Department of Criminal Justice published proposed amendments to §163.21 in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4494). The Board adopted the amended rule on June 19, 2009, and the adoption notice is published in this issue of the *Texas Register*.

TRD-200903681

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Filed: August 21, 2009



### State Board for Educator Certification

#### Title 19, Part 7

The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 239, Student Services Certificates, pursuant to the Texas Government Code, §2001.039. The rules reviewed by the SBEC in 19 TAC Chapter 239 are organized under the following subchapters: Subchapter A, School Counselor Certificate; Subchapter B, School Librarian Certificate; Subchapter C, Educational Diagnostician Certificate; Subchapter D, Reading Specialist Certificate; and Subchapter E, Master Teacher Certificate. The SBEC proposed the review of 19 TAC Chapter 239 in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4549).

Relating to the review of 19 TAC Chapter 239, the SBEC finds that the reasons for adoption continue to exist and proposes to readopt the rules with changes to update the rules to reflect current law and add specificity to the requirements relating to the school counselor certificate, school librarian certificate, educational diagnostician certificate, reading specialist certificate, and master teacher certificate.

The SBEC is proposing amendments to §§239.1, 239.5, 239.10, 239.15, 239.20, 239.25, 239.30, 239.40, 239.45, 239.50, 239.55, 239.60, 239.65, 239.70, 239.80 - 239.86, 239.90 - 239.95, and 239.100 - 239.104, which may be found in the Proposed Rules section of this issue.

Following is a summary of the public comments received and corresponding responses.

**Comment:** The director of human resources with the Jacksonville Independent School District (ISD) commented that counselors and librarians are still needed.

**Board Response:** The SBEC agreed that counselors and librarians are needed. The proposed amendments to 19 TAC Chapter 239 would continue to provide rules for the issuance of the school counselor certificate, school librarian certificate, educational diagnostician certificate, reading specialist certificate, and master teacher certificate.

**Comment:** An individual commented that the master reading teacher certificate should be continued. The individual further commented that school districts use master reading teacher candidates and coursework as a method for obtaining a teacher knowledgeable in mentoring, coaching, reading, second language learners, and assessment for their Response to Intervention processes.

**Board Response:** The SBEC agreed that the master reading teacher certificate continues to be needed. The proposed amendments to 19 TAC Chapter 239 would continue to provide rules for the issuance of the master reading teacher certificate.

**Comment:** An individual commented that taking a test to get certified to be a school counselor is not fair. The individual further commented that the job has nothing to do with what is on the test. The commenter also stated that the principal has the school counselor doing the principal's job and testing for the Texas Assessment of Knowledge and Skills (TAKS).

**Board Response:** The SBEC disagreed that the school counselor certification examination is not related to the duties of school counselor. The Texas Examination of Educator Standards (TExES) for school counselor is based on the standards found in 19 TAC §239.15, Standards for the School Counselor Certificate.

**Comment:** The president of the Texas Counseling Association, 42 school counselors, three licensed professional counselors, six university counseling program staff, 10 school district counseling administrators, nine individuals, and 13 principals commented that the requirement of two years of teaching experience for the issuance of the school counselor certificate in 19 TAC §239.20(4) should be retained. The commenters stated that it is important for the school counselor to understand classroom management and instructional strategies in order to assist classroom teachers and school administrators. The commenters further stated that experience as a classroom teacher is an invaluable and essential part of the overall success of a school counselor. The commenters also stated that teaching experience is necessary to effectively teach guidance lessons to all students.

**Board Response:** The SBEC agreed that the requirement of two years of teaching experience for the issuance of the school counselor certificate in 19 TAC §239.20(4) should be retained and took action to retain the requirement as part of the proposed amendment to §239.20.

**Comment:** Two school counselors, three licensed professional counselors, two university counseling program staff, and three individuals commented that the requirement of two years of teaching experience for the issuance of the school counselor certificate in 19 TAC §239.20(4) should be eliminated. The commenters stated that because school counselors do not manage a classroom on a day-to-day basis, it is not necessary for a school counselor to have teaching experience. Additionally, one of the commenters stated that it was narrow minded to think that a school counselor must have taught in a classroom to provide adequate counseling to children. The commenters also suggested, with the elimination of the teaching experience, specialized training in school counseling should be required.

Board Response: The SBEC disagreed with the elimination of the requirement of two years of teaching experience for the issuance of the school counselor certificate in 19 TAC §239.20(4). Currently, 19 TAC §239.20(4) requires two years of teaching experience. A stakeholder meeting was held in June 2009, and stakeholders in attendance, including members of the Texas Counseling Association and/or Texas School Counselor Association, supported continuing the teaching experience requirement. Additionally, the two-year teaching experience requirement is consistent with the requirement for other professional certificates, including the educational diagnostician certificate, the school librarian certificate, and the principal certificate. Whether enrolled in a university based or alternative certification program, a candidate for the school counselor certificate must receive specialized training that is based on the standards listed in 19 TAC §239.15, Standards for the School Counselor Certificate. The SBEC took action to retain the two-year teaching experience requirement as part of the proposed amendment to §239.20.

Comment: Three school counselors, one licensed professional counselor, one university counseling program staff, one school district counseling administrator, and three individuals commented that the requirements of a master's degree for the issuance of a school counselor certificate should be modified to require, at a minimum, a master's degree in education or a related field. The commenters stated that the master's degree is an appropriate extension of the certification process, which already requires 24 hours in counseling.

Board Response: The SBEC agreed that a master's degree should be required. The SBEC took action to propose an amendment to §239.20(3) that would include the phrase "at a minimum." The SBEC disagreed with requiring a master's degree in education or related field because a candidate for the school counselor certificate must receive specialized training that is based on the standards listed in 19 TAC §239.15, Standards for the School Counselor Certificate.

Comment: The president of the Texas Counseling Association, 19 school counselors, two licensed professional counselors, four university counseling program staff, four school district counseling administrators, and two individuals commented that the requirement of a master's degree for the issuance of the school counselor certificate should be modified to require, "at a minimum, a master's degree in Counseling." The commenters stated that a master's degree in counseling will help to ensure that school counselors have received training in guidance and counseling strategies necessary to help students succeed as well as prepare them to respond to child abuse issues, drug and alcohol problems, suicidal ideas and threats, school violence, and other crisis situations. Additionally, the commenters noted that a graduate program will provide training, including counseling skills and intervention strategies. The commenters further stated that an individual must have knowledge and experience specific to counseling and noted that there is a big difference between a master's degree in Education and a master's degree in Counseling. The commenters also stated that only individuals fully trained as master's level counselors and who have the understanding of the education system have the skills required to guide students through the myriad of educational programs connected with the school counselor program.

Board Response: The SBEC disagreed with the specific requirement of a master's degree in Counseling. The SBEC has approved five entities to offer an alternative certification program (ACP) for the school counselor certificate. These ACPs do not offer a master's degree. However, a candidate must hold a master's degree for the issuance of the school counselor certificate. There are 46 university based school counselor programs. Candidates who complete a university based program will complete a master's degree. The degree may be in education with emphasis in counseling or it may be in counseling. Whether enrolled in

a university based or alternative certification program, a candidate for the school counselor certificate must receive specialized training that is based on the standards listed in 19 TAC §239.15, Standards for the School Counselor Certificate.

Comment: A school counselor commented that she was "appalled that counselors must teach only 3 years." The school counselor stated that it is important to have been a teacher in order to enhance student achievement.

Board Response: The SBEC disagreed with the comment regarding three years of teaching experience. Current rule and proposed language in 19 TAC §239.20(4) continues to require two years of teaching experience. The SBEC took action to retain the two-year requirement as part of the proposed amendment to §239.20.

Comment: A school counselor commented against diminishing the standards for counselors.

Board Response: The SBEC agreed that the standards for school counselors should not be diminished. The proposed amendment to 19 TAC §239.15, Standards for the School Counselor Certificate, would not include changes to the standards. Whether enrolled in a university based or alternative certification program, a candidate for the school counselor certificate must receive specialized training that is based on the standards listed in 19 TAC §239.15, Standards for the School Counselor Certificate.

This concludes the review of 19 TAC Chapter 239.

TRD-200903716

Karen Loonam

Deputy Associate Commissioner, Educator Quality and Standards,  
Texas Education Agency

State Board for Educator Certification

Filed: August 24, 2009



The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 240, American Sign Language Certificate, pursuant to the Texas Government Code, §2001.039. The SBEC proposed the review of 19 TAC Chapter 240 in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4549).

Relating to the review of 19 TAC Chapter 240, the SBEC finds that the reasons for adopting §240.1, American Sign Language Certificate, do not continue to exist. The SBEC is proposing the repeal of §240.1, which may be found in the Proposed Rules section of this issue. The proposed repeal of §240.1 is necessary since §240.1 is obsolete, with an expiration date of September 1, 2006, specified in rule and was superseded by the current rules for the American Sign Language certificate in 19 TAC §231.1, Criteria for Assignment of Public School Personnel, and §233.15, Languages Other Than English.

Following is a summary of the public comment received and corresponding response.

Comment: The director of human resources with the Jacksonville Independent School District commented that sign language teachers are still needed.

Board Response: The SBEC agreed that sign language teachers are needed. The SBEC took action to propose the repeal of 19 TAC Chapter 240 since the rule in the chapter is obsolete and has been superseded by the rules for issuing an American Sign Language certificate based on the standards established for the Texas Examination of Educator Standards (TExES). The current rules for the American Sign Language certificate are found in 19 TAC §231.1, Criteria for Assignment of Public School Personnel, and §233.15, Languages Other Than Eng-

lish. Therefore, the American Sign Language certificate would continue to be issued.

This concludes the review of 19 TAC Chapter 240.

TRD-200903717

Karen Loonam

Deputy Associate Commissioner, Educator Quality and Standards,  
Texas Education Agency

State Board for Educator Certification

Filed: August 24, 2009



# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

**Figure: 7 TAC §84.204(h)**

<b>Texas Disclosure of Equity in Trade-in Motor Vehicle</b>		
The information below is valid as of _____ (date) and after this date is no longer valid.		
Name of Buyer(s)	Trade-in Make / Model / Year	
Date	VIN#	
Dealership Allowance for Trade-in	\$	
Amount Owed on Trade-in	\$	
Equity Amount  <small>*If the EQUITY amount is NEGATIVE, the value the dealer is offering for your trade-in is less than what you currently owe on your trade-in. The negative equity may be included in the retail installment contract in addition to the cash price of the vehicle you are purchasing now.</small>	\$	Equity:  <input type="checkbox"/> POSITIVE  <input type="checkbox"/> NEGATIVE
Cash Price of Vehicle	\$	
Amount Financed	\$	
Buyer(s) Signature(s)	Date	
_____	_____	
_____	_____	
Dealer's Signature	Date	
_____	_____	
Dealer's Printed Name		
_____		
Name of Dealership _____		
Street Address _____		
City, State, Zip _____		
Telephone No. _____		



**Figure: 7 TAC §84.308(e)(1)**

<b>Original Financing Term (Months)</b>	<b>Rate per \$1,000 of Amount Financed</b>	
	<b>Retail Installment Sales Contract</b>	<b>Balloon Retail Installment Sales Contract / Lease</b>
0-12	\$ 0.48	\$ 3.12
13-18	1.08	5.04
19-24	1.92	7.16
25-36	4.32	13.24
37-48	7.95	18.87
49-60	12.99	24.92
61-72	20.34	32.31
73+	24.77	36.74

**Figure: 7 TAC §84.308(e)(2)**

<b>Original Financing Term (Months)</b>	<b>Rate per \$100 or Percentage of Amount Financed</b>
0-12	2.00
13-18	2.75
19-24	3.00
25-36	3.25
37-48	3.50
49-60	3.75
61-72	4.00
73+	4.25

Figure: 7 TAC §84.808(7)

<b>ANNUAL PERCENTAGE RATE</b> The cost of my credit as a yearly rate.  <div style="text-align: right;">% \$</div>	<b>FINANCE CHARGE</b> The dollar amount the credit will cost me.  <div style="text-align: right;">\$</div>	<b>Amount Financed</b> The amount of credit provided to me or on my behalf.  <div style="text-align: right;">\$</div>	<b>Total of Payments</b> The amount I will have paid after I have made all payments as scheduled.  <div style="text-align: right;">\$</div>	<b>Total Sale Price</b> The total cost of my purchase on credit, including down payment of <div style="text-align: right;">\$</div>
--	---	--	---	--

**My Payment Schedule will be:**

Number of Payments	Amount of Payments	When Payments Are Due

**Security:** You will have a security interest in the motor vehicle being purchased.

**Late Charge:** [True daily earnings:] (Option A:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of \_\_\_\_% per year on the past due amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of \_\_\_\_% of the scheduled payment. [Scheduled installment earnings method or sum of the periodic balances:] (Option A:) If I do not pay my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge on the past due amount at the contract rate. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of \_\_\_\_% per year on the late amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option C:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of \_\_\_\_% of the scheduled payment.

**Prepayment:** [True daily earnings method:] If I pay all that I owe early, I will not have to pay a penalty. [Sum of the periodic balances method:] I can pay all that I owe early. If I do so, I can get a refund of part of the Finance Charge.

**Additional information:** I will refer to this document for information about nonpayment, default, security interests, any required repayment in full before the scheduled date, and prepayment refunds.

**Figure: 7 TAC §84.808(8)(A)**

ITEMIZATION OF AMOUNT FINANCED																																																																	
1.	Cash price [Optional additional description: "(including any accessories, services, and taxes)"]	\$ _____ (1)																																																															
2.	Downpayment = <i>[If netting add: (if negative, enter "0" and see Line 4.A. below)]</i> Gross trade-in <span style="float: right;">\$ _____</span> - payoff by seller <span style="float: right;">\$ _____</span> = net trade-in <span style="float: right;">\$ _____</span> <i>[If not netting add: (if negative enter "0" and see Line 4.A. below)]</i> + cash <span style="float: right;">\$ _____</span> + Mfrs. Rebate <span style="float: right;">\$ _____</span> + other (describe) _____ <span style="float: right;">\$ _____</span> Total downpayment <span style="float: right;">\$ _____ (2)</span>																																																																
3.	Unpaid balance of cash price (1 minus 2)	\$ _____ (3)																																																															
4.	Other charges including amounts paid to others on my behalf (Seller may keep part of these amounts.): <table border="0" style="width: 100%; margin-top: 5px;"> <tr> <td style="width: 5%;">A.</td> <td style="width: 85%;">Net trade-in payoff <i>[Alternative caption: "prior credit or lease balance"]</i> to _____</td> <td style="width: 10%; text-align: right;">\$ _____</td> </tr> <tr> <td>B.</td> <td>Cost of physical damage insurance paid to insurance company</td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td>C.</td> <td>Cost of optional coverages with physical damage insurance paid to insurance company</td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td>D.</td> <td>Cost of optional credit insurance paid to insurance company or companies</td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td></td> <td>Life _____</td> <td></td> </tr> <tr> <td></td> <td>Disability _____</td> <td></td> </tr> <tr> <td>E.</td> <td>Debt cancellation agreement fee paid to the Seller</td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td>F.</td> <td>Official fees paid to government agencies</td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td>G.</td> <td>Dealer's inventory tax <i>[Optional addition: (if not included in cash price)]</i></td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td>H.</td> <td>Sales tax <i>[Optional addition: (if not included in cash price)]</i></td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td>I.</td> <td>Other taxes <i>[Optional addition: (if not included in cash price)]</i></td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td>J.</td> <td>Government license and/or registration fees</td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td>K.</td> <td>Government certificate of title fee</td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td>L.</td> <td>Government vehicle inspection fees</td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td>M.</td> <td>Deputy service fee paid to dealer</td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td>N.</td> <td> <b>Documentary fee. A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents relating to the sale. A documentary fee may not exceed a reasonable amount agreed to by the parties. This notice is required by law. <i>[Option to insert Spanish translation of disclosure here.]</i></b> </td> <td style="text-align: right; vertical-align: bottom;">\$ _____</td> </tr> <tr> <td>O.</td> <td>Other charges (Seller must identify who is paid and describe purpose)</td> <td></td> </tr> <tr> <td></td> <td>to _____ for _____</td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td></td> <td>to _____ for _____</td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td></td> <td>to _____ for _____</td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td></td> <td></td> <td style="text-align: right;">\$ _____</td> </tr> </table>		A.	Net trade-in payoff <i>[Alternative caption: "prior credit or lease balance"]</i> to _____	\$ _____	B.	Cost of physical damage insurance paid to insurance company	\$ _____	C.	Cost of optional coverages with physical damage insurance paid to insurance company	\$ _____	D.	Cost of optional credit insurance paid to insurance company or companies	\$ _____		Life _____			Disability _____		E.	Debt cancellation agreement fee paid to the Seller	\$ _____	F.	Official fees paid to government agencies	\$ _____	G.	Dealer's inventory tax <i>[Optional addition: (if not included in cash price)]</i>	\$ _____	H.	Sales tax <i>[Optional addition: (if not included in cash price)]</i>	\$ _____	I.	Other taxes <i>[Optional addition: (if not included in cash price)]</i>	\$ _____	J.	Government license and/or registration fees	\$ _____	K.	Government certificate of title fee	\$ _____	L.	Government vehicle inspection fees	\$ _____	M.	Deputy service fee paid to dealer	\$ _____	N.	<b>Documentary fee. A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents relating to the sale. A documentary fee may not exceed a reasonable amount agreed to by the parties. This notice is required by law. <i>[Option to insert Spanish translation of disclosure here.]</i></b>	\$ _____	O.	Other charges (Seller must identify who is paid and describe purpose)			to _____ for _____	\$ _____		to _____ for _____	\$ _____		to _____ for _____	\$ _____			\$ _____
A.	Net trade-in payoff <i>[Alternative caption: "prior credit or lease balance"]</i> to _____	\$ _____																																																															
B.	Cost of physical damage insurance paid to insurance company	\$ _____																																																															
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	to _____ for _____	\$ _____																																																															
		\$ _____																																																															
	Total other charges and amounts paid to others on my behalf	\$ _____ (4)																																																															
5.	Amount Financed (3 + 4)	\$ _____ (5)																																																															

*[Optional caption: Taxes, title fee, license fee, and any state inspection fee (except for \$7.00 of each such inspection fee that will be retained by Seller) will be paid by Seller to government agencies. Documentary fee and deputy service fee will be retained by Seller and the Seller may also retain parts of the insurance, service contracts, and other charges.]*

**Figure: 7 TAC §84.808(8)(B)**

ITEMIZATION OF AMOUNT FINANCED		
1. Cash price [Optional additional description: "(including any accessories, services, and taxes)"]		\$ _____ (1)
2. Downpayment (A + B) =		
A. [If netting add: (if negative, enter "0" and see Line 4.A. below)]		
Gross trade-in	\$ _____	
- payoff by Seller	\$ _____	
= net trade-in	\$ _____	
B. [If not netting add: (if negative enter "0" and see Line 4.A. below)]		
+ cash	\$ _____	
+ Mfrs. Rebate	\$ _____	
+ other (describe) _____	\$ _____	
Total downpayment		\$ _____ (2)
3. Unpaid balance of cash price (1 minus 2)		\$ _____ (3)
4. Other charges including amounts paid to others on my behalf (Seller may keep part of these amounts.):		
A. Net trade-in payoff [Alternative caption: "prior credit or lease balance"] to _____	\$ _____	
B. Cost of physical damage insurance paid to insurance company	\$ _____	
C. Cost of optional coverages with physical damage insurance paid to insurance company	\$ _____	
D. Cost of optional credit insurance paid to insurance company or companies	\$ _____	
Life		
Disability		
E. Debt cancellation agreement fee paid to the Seller	\$ _____	
F. Official fees paid to government agencies	\$ _____	
G. Dealer's inventory tax [Optional addition: (if not included in cash price)]	\$ _____	
H. Other taxes [Optional addition: (if not included in cash price)]	\$ _____	
I. Government license and/or registration fees	\$ _____	
J. Government certificate of title fee	\$ _____	
K. Government vehicle inspection fees	\$ _____	
L. Deputy service fee paid to dealer	\$ _____	
M. <b>Documentary fee. A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents relating to the sale. A documentary fee may not exceed a reasonable amount agreed to by the parties. This notice is required by law. [Option to insert Spanish translation of disclosure here.]</b>	\$ _____	
N. Other charges (Seller must identify who is paid and describe purpose)		
to _____ for _____	\$ _____	
to _____ for _____	\$ _____	
to _____ for _____	\$ _____	
Total Itemized Charges upon which the Finance Charge is assessed		\$ _____ (4)
5. Total Unpaid Balance Plus Itemized Charges Upon which the Finance Charge is assessed. (3+4)		\$ _____ (5)
6. Total Sales Tax (Upon Which No Finance Charge is Assessed)		\$ _____ (6)
7. <b>Amount Financed (5+6)</b>		\$ _____ (7)
<b>Finance Charge (Not Assessed Upon Sales Tax)</b>		\$ _____
[Optional caption: Taxes, title fee, license fee, and any state inspection fee (except for \$7.00 of each such inspection fee that will be retained by Seller) will be paid by Seller to government agencies. Documentary fee and deputy service fee will be retained by Seller.]		

[Note: A creditor may delete portions of the figure applicable to any insurance premiums or debt cancellation fees that are not financed in the contract and may also delete other inapplicable portions.]

**Figure: 7 TAC §84.808(11)**

**MODEL CLAUSE FOR PHYSICAL DAMAGE INSURANCE**

**PROPERTY INSURANCE:** I must keep the collateral insured against damage or loss in the amount I owe. I must keep this insurance until I have paid all that I owe under this contract. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss.

*[Note: The following optional provisions are included for creditors who finance physical damage insurance. Creditors who do not routinely finance physical damage coverage, or who are not financing it in a particular transaction, may delete the remaining disclosures in this figure. A creditor may also delete those portions below that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]*

If any insurance is included below, policies or certificates from the insurance company will describe the terms, conditions and deductibles.

*A. Physical damage insurance.* If you obtain physical damage insurance, the coverages, terms and premiums for these terms are set forth below.

Coverage	Term in Months	Premium
Collision	_____	<input type="checkbox"/> \$_____
Comprehensive	_____	<input type="checkbox"/> \$_____
Fire, Theft, and Combined Additional Coverage	_____	<input type="checkbox"/> \$_____
Other	_____	<input type="checkbox"/> \$_____

*B. Optional coverages with physical damage insurance.* If I have chosen this insurance, the premiums for the initial \_\_\_\_\_ month term are itemized below. *[Note: Alternatively, these optional coverages may be disclosed as part of Figure: 7 TAC §84.209(12).]*

☐\$\_\_\_\_\_ Towing and Labor Costs Reimbursement      ☐\$\_\_\_\_\_ Rental Reimbursement  
☐\$\_\_\_\_\_ Other: \_\_\_\_\_

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner. If the premium is for a required coverage, I have the option, for a period of 10 days from the date I receive a copy of this contract, of furnishing that coverage through existing policies of insurance or by obtaining like coverage from any insurance company authorized to do business in Texas.

*I agree to purchase the above checked coverages.*

Buyer's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Figure: 7 TAC §84.808(12)**

**MODEL CLAUSE FOR OPTIONAL INSURANCE COVERAGES AND DEBT CANCELLATION AGREEMENT**

*Optional insurance coverages and debt cancellation agreement.* The insurance or debt cancellation agreement described below is not required to obtain credit. It will not be provided unless I sign and agree to pay the extra cost. **[At creditor's option, the following may be added:]** My decision to buy or not buy these insurance coverages or debt cancellation agreement will not be a factor in the credit approval process.

Coverage	Term in Months	Premium or Fee
GAP*	_____	<input type="checkbox"/> \$ _____
Invol. Unemployment	_____	<input type="checkbox"/> \$ _____
Debt Cancellation Agreement**	_____	\$ _____
Liability Insurance	_____	<input type="checkbox"/> \$ _____
	\$ _____ per person \$ _____ per accident	\$ _____ property damage

\*If the motor vehicle is determined to be a total loss, GAP Insurance will pay you the difference between the proceeds of my basic collision policy and the amount I owe on the motor vehicle, minus my deductible. I can cancel that insurance without charge for 10 days from the date of this contract.

\*\*YOU WILL CANCEL ANY AMOUNTS I OWE UNDER THIS CONTRACT IN THE CASE OF A TOTAL LOSS OR THEFT UNDER THE TERMS OF THE DEBT CANCELLATION AGREEMENT FOR TOTAL LOSS OR THEFT OF AN ORDINARY VEHICLE. I can cancel the debt cancellation agreement without charge for 30 days from the date of this contract, or the date of the debt cancellation agreement, whichever is later.

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner. A debt cancellation agreement is not insurance and is regulated by the Office of Consumer Credit Commissioner.

*I want the optional coverages or agreement for which premiums or fees are included above.*

Buyer's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

*[Note: A creditor who does not routinely finance optional coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]*

**Figure: 7 TAC §84.808(13)**

**MODEL CLAUSE FOR OPTIONAL CREDIT LIFE AND ACCIDENT AND HEALTH (DISABILITY) INSURANCE**

*Optional credit life and credit disability insurance.* Credit life insurance and credit disability insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost. **[At creditor's option, the following may be added:]** My decision to buy or not buy these insurance coverages will not be a factor in the credit approval process.

☐ Credit Life, one buyer      \$ \_\_\_\_\_      ☐ Credit Life, both buyers      \$ \_\_\_\_\_      Term \_\_\_\_\_

☐ Credit Disability, one buyer      \$ \_\_\_\_\_      ☐ Credit Disability, both buyers      \$ \_\_\_\_\_      Term \_\_\_\_\_

**[Optional additional sentence for balloon payment contracts:]** Credit Life Insurance is for the scheduled term of this contract. Credit Disability Insurance covers the first \_\_\_\_\_ payments and does not cover the last scheduled payment. **[Optional additional language for true daily earnings method contracts:]** Credit life insurance pays only the amount I would owe if I paid all my payments on time. Credit disability insurance does not cover any increase in my payment or in the number of payments.

If the term of the insurance is 121 months or longer, the premium is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance indicated above.

Buyer's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Co-Buyer's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

*[Note: A creditor who does not routinely finance these coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]*

**Figure: 7 TAC §84.809(b)**

**MOTOR VEHICLE RETAIL INSTALLMENT SALES CONTRACT**

(Optional: DATE \_\_\_\_\_)  
 BUYER \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_  
 PHONE \_\_\_\_\_

SELLER/CREDITOR \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_  
 PHONE \_\_\_\_\_

The Buyer is referred to as "I" or "me." The Seller is referred to as "you" or "your." This contract may be transferred by the Seller.

**PROMISE TO PAY**

The credit price is shown below as the "Total Sales Price." The "Cash Price" is also shown below. By signing this contract, I choose to purchase the motor vehicle on credit according to the terms of this contract. I agree to pay you the Amount Financed, Finance Charge, and any other charges in this contract. I agree to make payments according to the Payment Schedule in this contract. If more than one person signs as a buyer, I agree to keep all the promises in this agreement even if the others do not.

I have thoroughly inspected, accepted, and approved the motor vehicle in all respects.

**MOTOR VEHICLE IDENTIFICATION**

Stock No.	Year	Make	Model	Vehicle Identification Number	License Number (if applicable)	<input type="checkbox"/> New <input type="checkbox"/> Demonstrator <input type="checkbox"/> Factory <input type="checkbox"/> Official/Executive <input type="checkbox"/> Used	USE FOR WHICH PURCHASED <input type="checkbox"/> PERSONAL, FAMILY OR HOUSEHOLD <input type="checkbox"/> BUSINESS OR COMMERCIAL <input type="checkbox"/> AGRICULTURAL

Trade-in: Year \_\_\_\_\_ Make \_\_\_\_\_ Model \_\_\_\_\_ VIN \_\_\_\_\_ License No. \_\_\_\_\_

<b>ANNUAL PERCENTAGE RATE</b> The cost of my credit as a yearly rate.  <div style="text-align: right;">% \$</div>	<b>FINANCE CHARGE</b> The dollar amount the credit will cost me.  <div style="text-align: right;">\$</div>	<b>Amount Financed</b> The amount of credit provided to me or on my behalf.  <div style="text-align: right;">\$</div>	<b>Total of Payments</b> The amount I will have paid after I have made all payments as scheduled.  <div style="text-align: right;">\$</div>	<b>Total Sale Price</b> The total cost of my purchase on credit, including down payment of <div style="text-align: right;">\$ _____</div>
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**My Payment Schedule will be:**

Number of Payments	Amount of Payments	When Payments Are Due

**Security:** You will have a security interest in the motor vehicle being purchased.

**Late Charge:** [True daily earnings:] (Option A:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of \_\_\_\_\_% per year on the past due amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of \_\_\_\_\_% of the scheduled payment. [Scheduled installment earnings method or sum of the periodic balances:] (Option A:) If I do not pay my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge on the past due amount at the contract rate. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of \_\_\_\_\_% per year on the late amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option C:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of \_\_\_\_\_% of the scheduled payment.

**Prepayment:** [True daily earnings method:] If I pay all that I owe early, I will not have to pay a penalty. [Sum of the periodic balances method:] I can pay all that I owe early. If I do so, I can get a refund of part of the Finance Charge.

**Additional information:** I will refer to this document for information about nonpayment, default, security interests, any required repayment in full before the scheduled date, and prepayment refunds.

## ITEMIZATION OF AMOUNT FINANCED

1. Cash price [Optional additional description: "(including any accessories, services, and taxes)"] \$ \_\_\_\_\_ (1)
  
2. Downpayment = \$ \_\_\_\_\_  
 [If netting add: (if negative, enter "0" and see Line 4.A. below)]  
 Gross trade-in \$ \_\_\_\_\_  
 - payoff by Seller \$ \_\_\_\_\_  
 = net trade-in \$ \_\_\_\_\_  
 [If not netting add: (if negative enter "0" and see Line 4.A. below)]  
 + cash \$ \_\_\_\_\_  
 + Mfrs. Rebate \$ \_\_\_\_\_  
 + other (describe) \_\_\_\_\_ \$ \_\_\_\_\_  
 Total downpayment \$ \_\_\_\_\_ (2)
  
3. Unpaid balance of cash price (1 minus 2) \$ \_\_\_\_\_ (3)
  
4. Other charges including amounts paid to others on my behalf (Seller may keep part of these amounts.):
  - A. Net trade-in payoff [Alternative caption: "prior credit or lease balance"] to \$ \_\_\_\_\_
  - B. Cost of physical damage insurance paid to insurance company \$ \_\_\_\_\_
  - C. Cost of optional coverages with physical damage insurance paid to insurance company \$ \_\_\_\_\_
  - D. Cost of optional credit insurance paid to insurance company or companies \$ \_\_\_\_\_  
 Life \_\_\_\_\_  
 Disability \_\_\_\_\_
  - E. Debt cancellation agreement fee paid to the Seller \$ \_\_\_\_\_
  - F. Official fees paid to government agencies \$ \_\_\_\_\_
  - G. Dealer's inventory tax [Optional addition: (if not included in cash price)] \$ \_\_\_\_\_
  - H. Sales tax [Optional addition: (if not included in cash price)] \$ \_\_\_\_\_
  - I. Other taxes [Optional addition: (if not included in cash price)] \$ \_\_\_\_\_
  - J. Government license and/or registration fees \$ \_\_\_\_\_
  - K. Government certificate of title fee \$ \_\_\_\_\_
  - L. Government vehicle inspection fees \$ \_\_\_\_\_
  - M. Deputy service fee paid to dealer \$ \_\_\_\_\_
  - N. **Documentary fee. A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents relating to the sale. A documentary fee may not exceed a reasonable amount agreed to by the parties. This notice is required by law. [Option to insert Spanish translation of disclosure here.]** \$ \_\_\_\_\_
  - O. Other charges (Seller must identify who is paid and describe purpose) \$ \_\_\_\_\_  
 to \_\_\_\_\_ for \_\_\_\_\_ \$ \_\_\_\_\_  
 to \_\_\_\_\_ for \_\_\_\_\_ \$ \_\_\_\_\_  
 to \_\_\_\_\_ for \_\_\_\_\_ \$ \_\_\_\_\_

Total other charges and amounts paid to others on my behalf \$ \_\_\_\_\_ (4)
  
5. **Amount Financed** (3 + 4) \$ \_\_\_\_\_ (5)

[Optional caption: Taxes, title fee, license fee, and any state inspection fee (except for \$7.00 of each such inspection fee that will be retained by Seller) will be paid by Seller to government agencies. Documentary fee and deputy service fee will be retained by Seller and the Seller may also retain parts of the insurance, service contracts, and other charges.]

[Note: A creditor may delete portions of the figure applicable to any insurance premiums or debt cancellation fees that are not financed in the contract and may also delete other inapplicable portions.]

DEFERRED DOWNPAYMENT(S)	
AMOUNT	DATE DUE



**MODEL CLAUSE FOR PHYSICAL DAMAGE INSURANCE**

**PROPERTY INSURANCE:** I must keep the collateral insured against damage or loss in the amount I owe. I must keep this insurance until I have paid all that I owe under this contract. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss.

*[Note: The following optional provisions are included for creditors who finance physical damage insurance. Creditors who do not routinely finance physical damage coverage, or who are not financing it in a particular transaction, may delete the remaining disclosures in this figure. A creditor may also delete those portions below that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]*

If any insurance is included below, policies or certificates from the insurance company will describe the terms, conditions and deductibles.

**A. Physical damage insurance.** If you obtain physical damage insurance, the coverages, terms and premiums for these terms are set forth below.

Coverage	Term in Months	Premium
Collision	_____	<input type="checkbox"/> \$ _____
Comprehensive	_____	<input type="checkbox"/> \$ _____
Fire, Theft, and Combined Additional Coverage	_____	<input type="checkbox"/> \$ _____
Other	_____	<input type="checkbox"/> \$ _____

**B. Optional coverages with physical damage insurance.** If I have chosen this insurance, the premiums for the initial \_\_\_\_\_ month term are itemized below. *[Note: Alternatively, these optional coverages may be disclosed as part of Figure: 7 TAC §84.209(12).]*

☐ \$ \_\_\_\_\_ Towing and Labor Costs Reimbursement      ☐ \$ \_\_\_\_\_ Rental Reimbursement  
☐ \$ \_\_\_\_\_ Other: \_\_\_\_\_

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner. If the premium is for a required coverage, I have the option, for a period of 10 days from the date I receive a copy of this contract, of furnishing that coverage through existing policies of insurance or by obtaining like coverage from any insurance company authorized to do business in Texas.

*I agree to purchase the above checked coverages.*

Buyer's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**MODEL CLAUSE FOR OPTIONAL INSURANCE COVERAGES AND DEBT CANCELLATION AGREEMENT**

*Optional insurance coverages and debt cancellation agreement.* The insurance or debt cancellation agreement described below is not required to obtain credit. It will not be provided unless I sign and agree to pay the extra cost. **[At creditor's option, the following may be added:]** My decision to buy or not buy these insurance coverages or debt cancellation agreement will not be a factor in the credit approval process.

Coverage	Term in Months	Premium or Fee
GAP*	_____	<input type="checkbox"/> \$ _____
Invol. Unemployment	_____	<input type="checkbox"/> \$ _____
Debt cancellation agreement**	_____	\$ _____
Liability Insurance	_____	<input type="checkbox"/> \$ _____
	\$ _____ per person \$ _____ per accident	\$ _____ property damage

\*If the motor vehicle is determined to be a total loss, GAP Insurance will pay you the difference between the proceeds of my basic collision policy and the amount I owe on the motor vehicle, minus my deductible. I can cancel that insurance without charge for 10 days from the date of this contract.

\*\*YOU WILL CANCEL ANY AMOUNTS I OWE UNDER THIS CONTRACT IN THE CASE OF A TOTAL LOSS OR THEFT UNDER THE TERMS OF THE DEBT CANCELLATION AGREEMENT FOR TOTAL LOSS OR THEFT OF AN ORDINARY VEHICLE. I can cancel the debt cancellation agreement without charge for 30 days from the date of this contract, or the date of the debt cancellation agreement, whichever is later.

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner. A debt cancellation agreement is not insurance and is regulated by the Office of Consumer Credit Commissioner.

*I want the optional coverages or agreement for which premiums or fees are included above.*

Buyer's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

*[Note: A creditor who does not routinely finance optional coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]*

**Optional credit life and credit disability insurance.** Credit life insurance and credit disability insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost. **[At creditor's option, the following may be added:]** My decision to buy or not buy these insurance coverages will not be a factor in the credit approval process.

[Optional additional sentence for balloon payment contracts:] Credit Life Insurance is for the scheduled term of this contract. Credit Disability Insurance covers the first \_\_\_\_ payments and does not cover the last scheduled payment. [Optional additional language for true daily earnings method contracts:] Credit life insurance pays only the amount I would owe if I paid all my payments on time. Credit disability insurance does not cover any increase in my payment or in the number of payments.

If the term of the insurance is 121 months or longer, the premium is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance indicated above.

Buyer's Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Co-Buyer's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

[Note: A creditor who does not routinely finance these coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

(OPTION A) THIS CONTRACT DOES NOT INCLUDE INSURANCE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS.

(OPTION B) UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS CONTRACT.

(OPTION C) UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, ANY INSURANCE REFERRED TO IN THIS CONTRACT DOES NOT INCLUDE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS.

Any change to this contract must be in writing. Both you and I must sign it. No oral changes to this contract are enforceable.

\_\_\_\_\_ Buyer \_\_\_\_\_ Co-Buyer

**[Regular transaction using sum of the periodic balances method:]** (Option A: Sales Tax Advance) You figure the Finance Charge using the add-on method as defined by the Texas Finance Commission Rule. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. (Option A: Sales Tax Advance) The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. The add-on Finance Charge is calculated at a rate of \$\_\_\_\_\_ per \$100.00. (Option B: Deferred Sales Tax) The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance subject to a finance charge and added as a lump sum to the unpaid principal balance subject to a Finance Charge for the full term of the contract. The add-on finance charge is calculated at a rate of \$\_\_\_\_\_ per \$100.00.

**[True daily earnings method-] (Option A: Sales Tax Advance)** You figure the Finance Charge using the true daily earnings method as defined by the Texas Finance Code. Under the true daily earnings method, the Finance Charge will be figured by applying the daily rate to the unpaid portion of the Amount Financed for the number of days the unpaid portion of the Amount Financed is outstanding. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or returned check charges. **(Option A: Sales Tax Advance)** The contract rate is \_\_\_\_%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. The daily rate is 1/365th of the contract rate. The unpaid principal balance does not include the late charges or returned check charges. **(Option B: Deferred Sales Tax)** The contract rate is \_\_\_\_%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. The daily rate is 1/365th of the contract rate. The unpaid principal balance subject to a finance charge does not include the late charges, sales tax, or returned check charges.

**[Scheduled installment earnings method:]** (Option A: Sales Tax Advance) You figure the Finance Charge using the scheduled installment earnings method as defined by the Texas Finance Code. Under the scheduled installment earnings method, the Finance Charge is figured by applying the daily rate to the unpaid portion of the Amount Financed as if each payment will be made on its scheduled payment date. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or returned check charges. (Option A: Sales Tax Advance) The contract rate is \_\_\_\_%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance does not include the late charges or returned check charges. (Option B: Deferred Sales Tax) The contract rate is \_\_\_\_%. This contract rate may not be the same as the Annual Percentage Rate. You figured the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance subject to a Finance Charge does not include the late charges, sales tax, or returned check charges.

## CONSUMER WARNING

**[Scheduled Installment Earnings Method:]** Notice to the buyer - I will not sign this contract before I read it or if it contains any blank spaces. I am entitled to a copy of the contract I sign. Under the law, I have the right to pay off in advance all that I owe and under certain conditions may obtain a partial refund of the finance charge. I will keep this contract to protect my legal rights.

**[True Daily Earnings Method:]** Notice to the buyer - I will not sign this contract before I read it or if it contains any blank spaces. I am entitled to a copy of the contract I sign. Under the law, I have the right to pay off in advance all that I owe and under certain conditions may save a portion of the finance charge. I will keep this contract to protect my legal rights.

## BUYER'S ACKNOWLEDGEMENT OF CONTRACT RECEIPT

(OPTION A: **If the buyer's signature is dated**) I AGREE TO THE TERMS OF THIS CONTRACT. WHEN I SIGN THE CONTRACT, I WILL RECEIVE THE COMPLETED CONTRACT. IF NOT, I UNDERSTAND THAT A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME.

(OPTION B: **If the buyer's signature is not dated**) I AGREE TO THE TERMS OF THIS CONTRACT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT. I RECEIVED THE COMPLETED CONTRACT ON \_\_\_\_\_ (MO.) (DAY) (YR.)

(OPTION C: **If the buyer's signature is not dated**) I SIGNED THIS CONTRACT ON \_\_\_\_\_ AND A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME.

(OPTION D: **If the buyer's signature is dated or not dated**) I AGREE TO THE TERMS OF THIS CONTRACT AND ACKNOWLEDGE RECEIPT OF A COMPLETED COPY OF IT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT.

_____ Buyer	_____ Date	_____ Seller	_____ Date
_____ Co-Buyer	_____ Date		

THIS CONTRACT IS NOT VALID UNTIL YOU AND I SIGN IT.

**CONSUMER CREDIT COMMISSIONER NOTICE.** To contact (insert authorized business name of retail seller, creditor or holder as appropriate) about this account, call (insert telephone number of retail seller, creditor, or holder as appropriate). This contract is subject in whole or in part to Texas law which is enforced by the Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207; [www.occ.state.tx.us](http://www.occ.state.tx.us); (800) 538-1579, and can be contacted relative to any inquiries or complaints.

## OTHER TERMS AND CONDITIONS

**[Sum of the periodic balances method and scheduled installment earnings method:]** HOW YOU CALCULATE MY FINANCE CHARGE  
**REFUND IF I PREPAY** If I prepay in full, I may be entitled to a refund of part of the Finance Charge. **[Sum of the periodic balances method:]** You will figure the Finance Charge refund by using the sum of the periodic balances method as defined by the Texas Finance Commission rule. (Optional: You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge Refund will be computed upon the entire Finance Charge minus the Acquisition Cost. I will not get a refund if it is less than \$1.00.) (Additional Option for heavy commercial vehicle: You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge refund will be computed based upon the entire Finance Charge calculated using the sum of the periodic balances method. Then you will subtract the Acquisition Cost from that amount. I will not get a refund if it is less than \$1.00.) **[Scheduled installment earnings method:]** You will figure the Finance Charge refund by the scheduled installment earnings method as defined by the Texas Finance Commission rule. (Optional: You will figure my refund by deducting earned finance charges from the Finance Charge. You will figure earned finance charges by applying a daily rate to the unpaid principal balance as if I paid all my payments on the date due. If I prepay between payment due dates, you will figure earned finance charges for the partial payment period. You do this by counting the number of days from the due date of the prior payment through the date I prepay. You then multiply that number of days times the daily rate. The daily rate is 1/365th of the Annual Percentage Rate. You will also add the acquisition cost of \$25 (or \$150 for a heavy commercial vehicle) to the earned finance charge. I will not get a refund if it is less than \$1.00.) **[Flexible contract forms designed to accommodate alternative methods:]** You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule if: this contract is a Regular Payment Contract as defined by the Texas Finance Commission rule, and this contract does not have a term greater than 61 months. If this contract is not a Regular Payment Contract or if it has a term greater than 61 months, you will figure the Finance Charge refund using the scheduled installment earnings method as defined by the Texas Finance Commission rule. I will not get a refund if it is less than \$1.00.

**HOW YOU WILL APPLY MY PAYMENTS** **[True daily earnings method:]** You will apply my payments in the following order:

1. earned but unpaid finance charge; and
2. anything else I owe under this agreement.

**HOW LATE OR EARLY PAYMENTS CHANGE WHAT I MUST PAY** **[True daily earnings method:]** You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. If I do not timely make all my payments in at least the correct amount, I will have to pay more Finance Charge and my last payment will be more than my final scheduled payment. If I make scheduled payments early, my Finance Charge will be reduced (less). If I make my scheduled payments late, my Finance Charge will increase.

**INTEREST AFTER MATURITY** If I don't pay all I owe when the final payment becomes due, or I do not pay all I owe if you demand payment in full under this contract, I will pay an interest charge on the amount that is still unpaid. That interest charge will be the higher rate of 18% per year or the maximum rate allowed by law, if that rate is higher. The interest charge for this amount will begin the day after the final payment becomes due.

**SPECIAL PROVISIONS FOR BALLOON PAYMENT CONTRACTS** A balloon payment is a scheduled payment more than twice the amount of the average of my scheduled payments, other than the downpayment, that are due before the balloon payment.

**(Paying the balloon payment under Texas Finance Code §348.123(a))** I can pay all I owe when the balloon payment is due and keep my motor vehicle.

**(Option A: Refinancing the balloon payment)** If I buy the motor vehicle primarily for personal, family, or household use, I can enter into a new written agreement to refinance the balloon payment when due without a refinancing fee. If I refinance the balloon payment, my periodic payments will not be larger or more often than the payments in this contract. The annual percentage rate in the new agreement will not be more than the Annual Percentage Rate in this contract. This provision does not apply if my Payment Schedule has been adjusted to my seasonal or irregular income.

**(Option B: Special right to refinance balloon payment under Texas Finance Code §348.123(b)(5)(b)(iii))** I can enter into a new agreement to refinance my last installment if I am not in default. I can refinance at an annual percentage rate up to 5 points greater than the Annual Percentage Rate shown in this contract. The rate will not be more than applicable law allows. The new agreement will allow me to refinance the last installment for at least 24 months with equal monthly payments. You and I can also agree to refinance the last installment over another time period or on a different payment schedule.

**AGREEMENT TO KEEP MOTOR VEHICLE INSURED** I agree to have physical damage insurance covering loss or damage to the vehicle for the term of this contract. The insurance must cover your interest in the vehicle. (Optional Language Provision: The insurance must include collision coverage and either comprehensive or fire, theft, and combined additional coverage.)

**YOUR RIGHT TO PURCHASE REQUIRED INSURANCE IF I FAIL TO KEEP THE MOTOR VEHICLE INSURED** If I fail to give you proof that I have insurance, you may buy physical damage insurance. You may buy insurance that covers my interest and your interest in the motor vehicle, or you may buy insurance that covers your interest only. I will pay the premium for the insurance and a finance charge at the contract rate. If you obtain collateral protection insurance, you will mail notice to my last known address shown in your file.

**PHYSICAL DAMAGE INSURANCE PROCEEDS** I must use physical damage insurance proceeds to repair the motor vehicle, unless you agree otherwise in writing. However, if the motor vehicle is a total loss, I must use the insurance proceeds to pay what I owe you. I agree that you can use any proceeds from insurance to repair the motor vehicle, or you may reduce what I owe under this contract. If you apply insurance proceeds to the amount I owe, they will be applied to my payments in the reverse order of when they are due. If my insurance on the motor vehicle or credit insurance doesn't pay all I owe, I must pay what is still owed. Once all amounts owed under this contract are paid, any remaining proceeds will be paid to me.

**RETURNED INSURANCE PREMIUMS AND SERVICE CONTRACT CHARGES** [True daily earnings method:] If you get a refund on insurance or service contracts, or other contracts included in the cash price, you will subtract it from what I owe. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me. [Scheduled installment earnings method or sum of the periodic balances:] If you get a refund of insurance or service contract charges, you will apply it and the unearned finance charges on it in the reverse order of the payments to as many of my payments as it will cover. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me.

**APPLICATION OF CREDITS** Any credit that reduces my debt will apply to my payments in the reverse order of when they are due, unless you decide to apply it to another part of my debt. The amount of the credit and all finance charge or interest on the credit will be applied to my payments in the reverse order of my payments.

**TRANSFER OF RIGHTS** You may transfer this contract to another person. That person will then have all your rights, privileges, and remedies.

**SECURITY INTEREST** To secure all I owe on this contract and all my promises in it, I give you a security interest in:

- the motor vehicle including all accessories and parts now or later attached (Optional: and any other goods financed in this contract);
- all insurance proceeds and other proceeds received for the motor vehicle;
- any insurance policy, service contract or other contract financed by you and any proceeds of those contracts; and
- any refunds of charges included in this contract for insurance, or service contracts.

This security interest also secures any extension or modification of this contract. The certificate of title must show your security interest in the motor vehicle.

**USE AND TRANSFER OF THE MOTOR VEHICLE** I will not sell or transfer the motor vehicle without your written permission. If I do sell or transfer the motor vehicle, this will not release me from my obligations under this contract, and you may charge me a transfer of equity fee of \$25 (\$50 for a heavy commercial vehicle). I will promptly tell you in writing if I change my address or the address where I keep the motor vehicle. I will not remove the motor vehicle (Optional: motor vehicle or other collateral) from Texas for more than 30 days unless I first get your written permission.

**CARE OF THE MOTOR VEHICLE** I agree to keep the motor vehicle free from all liens and claims except those that secure this contract. I will timely pay all taxes, fines, or charges pertaining to the motor vehicle. I will keep the motor vehicle in good repair. I will not allow the motor vehicle to be seized or placed in jeopardy or use it illegally. I must pay all I owe even if the motor vehicle is lost, damaged or destroyed. If a third party takes a lien or claim against or possession of the motor vehicle, you may pay the third party any cost required to free the motor vehicle from all liens or claims. You may immediately demand that I pay you the amount paid to the third party for the motor vehicle. If I do not pay this amount, you may repossess the motor vehicle and add that amount to the amount I owe. If you do not repossess the motor vehicle, you may still demand that I pay you, but you cannot compute a finance charge on this amount.

**DEFAULT** I will be in default if:

- I do not pay any amount when it is due;
- I break any of my promises in this agreement;
- I allow a judgment to be entered against me or the collateral; or
- I file bankruptcy, bankruptcy is filed against me, or the motor vehicle becomes involved in a bankruptcy.

If I default, you can exercise your rights under this contract and your other rights under the law.

**LATE CHARGE** I will pay you a late charge as agreed to in this contract when it accrues.

**REPOSSESSION** If I default, you may repossess the motor vehicle from me if you do so peacefully. If any personal items are in the motor vehicle, you can store them for me and give me written notice at my last address shown on your records within 15 days of discovering that you have my personal items. If I do not ask for these items back within 31 days from the day you mail or deliver the notice to me, you may dispose of them as applicable law allows. Any accessory, equipment, or replacement part stays with the motor vehicle.

**MY RIGHT TO REDEEM** If you take my motor vehicle, you will tell me how much I have to pay to get it back. If I do not pay you to get the motor vehicle back, you can sell it or take other action allowed by law. My right to redeem ends when the motor vehicle is sold or you have entered into a contract for sale or accepted the collateral as full or partial satisfaction of a contract.

**DISPOSITION OF THE MOTOR VEHICLE** If I don't pay you to get the motor vehicle back, you can sell it or take other action allowed by law. You will send me notice at least 10 days before you sell it. You can use the money you get from selling it to pay allowed expenses and to reduce the amount I owe. Allowed expenses are expenses you pay as a direct result of taking the motor vehicle, holding it, preparing it for sale, and selling it. If any money is left, you will pay it to me unless you must pay it to someone else. If the money from the sale is not enough to pay all I owe, I must pay the rest of what I owe you plus interest. If you take or sell the motor vehicle, I will give you the certificate of title and any other document required by state law to record transfer of title.

**COLLECTION COSTS** If you hire an attorney who is not your employee to enforce this contract, I will pay reasonable attorney's fees and court costs as the applicable law allows.

**CANCELLATION OF OPTIONAL INSURANCE AND SERVICE CONTRACTS** This contract may contain charges for insurance or service contracts or for services included in the cash price. If I default, I agree that you can claim benefits under these contracts to the extent allowable, and terminate them to obtain refunds of unearned charges to reduce what I owe or repair the motor vehicle.

**YOUR RIGHT TO DEMAND PAYMENT IN FULL** If I default, or you believe in good faith that I am not going to keep any of my promises, you can demand that I immediately pay all that I owe. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe.

**IF YOU DEMAND I PAY ALL I OWE** [Sum of the periodic balances method or scheduled installment earnings method:] If you demand that I pay you all that I owe, you will give me a credit of part of the Finance Charge as if I had prepaid in full.

**INTEGRATION AND SEVERABILITY CLAUSE** This contract contains the entire agreement between you and me relating to the sale and financing of the motor vehicle. If any part of this contract is not valid, all other parts stay valid.

**LEGAL LIMITATIONS ON YOUR RIGHTS** If you don't enforce your rights every time, you can still enforce them later. You will exercise all of your rights in a lawful way. I don't have to pay finance charge or other amounts that are more than the law allows. This provision prevails over all other parts of this contract and over all your other acts.

**APPLICABLE LAW** Federal law and Texas law apply to this contract.

**SELLER'S DISCLAIMER OF WARRANTIES** Unless the seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the seller makes no warranties, express or implied, on the motor vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose. This provision does not affect any warranties covering the motor vehicle that the motor vehicle manufacturer may provide.

**NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.** (This provision applies to this contract only if the motor vehicle financed in the contract was purchased for personal, family, or household use.)

The rates of this contract are negotiable. The seller may assign or otherwise sell this contract and receive a discount or other payment for the difference between the rate, charges, or balance.

*In this box only, the word "you" refers to the Buyer.*

**Used Car Buyers Guide.** The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.  
**Spanish Translation:**

**Guía para compradores de vehículos usados.** La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

Figure: 7 TAC §89.701(c)

STATE OF TEXAS  
COUNTY OF

§  
§  
§  
§

After recording, return to:  
(Insert TRANSFEREE'S NAME)  
(Insert TRANSFEREE'S  
STREET ADDRESS)

**SWORN DOCUMENT AUTHORIZING TRANSFER OF TAX LIEN**

Before me, the undersigned notary, on this day personally appeared (Insert NAME(S) OF OWNER(S) OR AUTHORIZED REPRESENTATIVE(S)), known to me to be the person(s) whose name(s) is/are subscribed below, and being duly sworn, upon oath deposed and stated as follows:

"My name is (Insert NAME(S) OF OWNER(S) OR AUTHORIZED REPRESENTATIVE(S)). I am over 18 years of age and am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct. I or the entity I represent owns the real property described as follows:

Account No. or Property ID No.: \_\_\_\_\_  
Legal Description: \_\_\_\_\_  
Street Address, if applicable: \_\_\_\_\_  
Amount Paid for Transfer (including taxes, penalties,  
interest, and collection costs): \$ \_\_\_\_\_  
Tax Years: \_\_\_\_\_  
Transferee's Name: \_\_\_\_\_  
OCCC Property Tax License Lender No.: \_\_\_\_\_  
OR Exemption Information: \_\_\_\_\_  
Transferee's Street Address: \_\_\_\_\_  
\_\_\_\_\_

"Pursuant to Texas Tax Code §32.06, I hereby authorize the above-named transferee or transferee's agent (the "Transferee"), to pay all taxes, penalties, interest, and collection costs imposed by any and all local taxing units or their agents on the real property, described above, for the tax years listed above. I further authorize and direct the tax assessor-collector(s) for said taxing units to issue a tax receipt with the collector's seal of office or notarized signature to the Transferee and to certify that the taxes and any penalties and interest on the subject property and collection costs have been paid by the transferee on behalf of the owner, and the tax lien on the owner's property has been transferred to the Transferee.

"I have been given notice that if this property is my homestead and I am either age 65 or older or disabled, I may be eligible for a tax deferral under Texas Tax Code §33.06."

Property Owner  
OR Authorized Representative: Signature \_\_\_\_\_ Date Signed \_\_\_\_\_

Printed Name \_\_\_\_\_ Representative Capacity (if applicable) \_\_\_\_\_

*(Insert NOTARY'S SEAL)*

SUBSCRIBED AND SWORN TO BEFORE ME on this, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

**Figure: 7 TAC §89.702(c)**

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

§  
§

Date: \_\_\_\_\_

**CERTIFIED STATEMENT OF TRANSFER OF TAX LIEN**

Account No. or Property ID No.: \_\_\_\_\_

Legal Description: \_\_\_\_\_

Street Address, if applicable: \_\_\_\_\_

Taxing Unit(s): \_\_\_\_\_

Amount Paid for Transfer (including taxes, penalties,  
interest, and collection costs): \$ \_\_\_\_\_

Tax Years: \_\_\_\_\_

Property Owner(s)' Name(s): \_\_\_\_\_

Transferee's Name: \_\_\_\_\_

Transferee's Street Address: \_\_\_\_\_  
\_\_\_\_\_

I, (Insert NAME OF COLLECTOR), tax assessor-collector for (Insert NAME OF TAXING UNIT) and for all taxing units for which (Insert NAME OF TAXING UNIT) collects ad valorem taxes, certify that the above-named transferee or transferee's agent ("Transferee") has made payment of the amount listed above to the above-named taxing units on the property described above as consideration for a transfer of the tax lien(s), and that the tax lien(s) held by taxing units on the property for the tax years listed above are hereby transferred to Transferee in accordance with Texas Tax Code §32.06. I have issued a receipt to Transferee in conjunction with this certification reflecting the payment for the transfer in the amount of taxes, penalties, interest, and collection costs.

(Insert NAME OF COLLECTOR)

(Insert NAME OF TAXING UNIT), Tax Assessor-Collector

BY: \_\_\_\_\_

*(Signature of COLLECTOR OR DEPUTY)*

*(Insert SEAL OF COLLECTOR'S OFFICE,  
OR Insert NOTARY'S SEAL and complete notary information below.)*

SUBSCRIBED AND SWORN TO BEFORE ME on \_\_\_\_\_ by \_\_\_\_\_  
\_\_\_\_\_ *(Insert NAME OF COLLECTOR OR DEPUTY signing above).*

\_\_\_\_\_  
Notary Public, State of Texas

After recording, return to:  
(Insert TRANSFeree'S NAME)  
(Insert TRANSFeree'S STREET ADDRESS)

**Religious Society:**

Qualifications and Requirements	Necessary Documentation
Must be organized primarily for religious purposes.	<p>A signed and dated copy of the most recent version of all of the organization's organizing instrument(s).</p> <p>Or</p> <p>A copy of the page from the applicant's parent organization religious directory that lists the applicant organization's information.</p> <p>The name of the applicant organization must match the name of the organization on the documents submitted.</p>
Must have been organized in Texas for at least three years.	<p>If the applicant is affiliated with a state or national organization, Schedule G - Verification by Parent Organization.</p> <p>If the applicant is not affiliated with a state or national organization, a copy of a listing in a publication such as a national roster or newspaper article naming the organization.</p> <p>Or</p> <p>A letter to the applicant from a government agency.</p> <p>The document submitted must reflect the applicant's name, Texas address, and either be dated prior three years before the application date or establish the date the organization was founded.</p>
Must demonstrate that the organization has made significant progress toward the accomplishment of the it's purposes during the 12 months preceding the date of application.	<p>At least three (3) different types of acceptable documents as proof that your organization was continuously engaged in furthering your charitable purpose for the time period beginning one year prior to the date the application was signed.</p> <p>Examples of acceptable documentation include:</p> <ol style="list-style-type: none"> <li>1. a letter from the diocese,</li> <li>2. notices of church services, and/or church bulletins,</li> <li>3. canceled checks for clergy salaries, religious books, materials and/or supplies, maintenance of religious building(s),</li> <li>4. records of marriages performed, or records of funerals performed.</li> </ol>



	<p>To establish the beginning date, an organization may submit documentation dated up to three months prior to the year before the application was signed in order to prove that the organization has been continuously engaged in furthering its charitable purpose throughout the past twelve months.</p> <p>All documents must be dated and indicate the name of the organization.</p>
Must appoint only the organization's members to serve as operators for the organization.	<p>A current membership list with all officers and directors noted. Officers would include a priest, pastor, rabbi, or other head of the church. Membership list will be compared to persons listed on the application to confirm that only members have been named as operators.</p>
Must ensure that all of the organization's officers, directors and operators have not been convicted of a felony, criminal fraud, a gambling or gambling-related offense, or a crime of moral turpitude if less than 10 years has elapsed since the termination of a sentence, parole, mandatory supervision, or community supervision served for the offense.	<p>A signed and dated copy of the most recent version of all of the organization's organizing instruments(s) that list the officer and director positions.</p> <p>Or</p> <p>If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors.</p> <p>If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.</p> <p>The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have been disclosed.</p> <p>The Department of Public Safety will conduct a criminal history check on all officers, directors and operators.</p> <p>Any officer, director or operator not meeting the criminal history background requirement must resign before a license may be issued.</p>
Section 2001.102 License Application Requirements	<p>Most recent copy of IRS Form 990 if organization is required to file it with the Internal Revenue Service.</p> <p>Indicate on application if organization is not required to file Form 990.</p> <p>AND</p>

	If the organization is organized under the law of this state the organization must be in good standing with the Secretary of State, The Commission will request additional documentation from the applicant if we are unable to validate this directly.
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**Non-Profit Medical Organization:**

<b>Qualifications and Requirements</b>	<b>Necessary Documentation</b>
Main activities must be in support of medical research or treatment programs.	<p>A signed and dated copy of the most recent version of all of the organization's organizing instruments.</p> <p>The name of the applicant organization must match the name of the organization on the organizing instruments.</p>
Must have had a governing body or officers elected by the vote of the members or delegates elected by the members for at least three years.	<p>Copies of meeting minutes recording officer elections for the past three years showing the date of each meeting and signature of an officer.</p> <p>Or</p> <p>A dated list of officers and positions held for each year of the past three years.</p> <p>A statement signed by an officer indicating which positions were left open if the organization had positions defined in organizing instrument(s) that the organization did not fill.</p> <p>Organizing instrument(s) will be reviewed to ensure that the organization has members who elect officers and to confirm the officer positions.</p>
Must have been affiliated with a state or national organization organized to perform the same purposes for at least three years.	Schedule G - Verification by Parent Organization
Must hold a valid 501(c) exemption through the Internal Revenue Service.	If the Commission is unable to validate directly with the Internal Revenue Service that the organization has a 501(c) designation, the Commission will request additional documentation from the applicant.
May not distribute any income to members, officers, or governing body except as reasonable compensation for services.	<p>Most recent copy of IRS Form 990 if organization is required to file it with the Internal Revenue Service.</p> <p>Indicate on application if organization is not required to file Form 990.</p> <p>A signed and dated copy of the most recent</p>

	version of all of the organization's organizing instruments.
Must demonstrate significant progress toward the accomplishment of the organization's purposes during the 12 months preceding the date of application.	<p>At least three (3) different types of acceptable documents as proof that organization was engaged in furthering its charitable purpose for the time period beginning one year prior to the date the application was signed. Acceptable documentation may include:</p> <ol style="list-style-type: none"> <li>1. canceled checks in support of medical treatment or research programs, i.e., American Cancer Society, Muscular Dystrophy Association, or other recognized organizations dedicated to the elimination of disease;</li> <li>2. canceled checks for the purchase of medical equipment or to provide medical care for the needy; or</li> <li>3. letters of appreciation from individuals or organizations receiving benefits for treatment.</li> <li>4. IRS Form 990</li> <li>5. newspaper articles</li> </ol> <p>To establish the beginning date, an organization may submit documentation dated up to three months prior to the year before the application was signed in order to prove that the organization has been engaged in furthering its charitable purpose throughout the past twelve months.</p> <p>All documents must be dated and indicate the name of the organization</p>
May appoint only the organization's members to serve as operators.	A current membership list with officers and directors noted. Membership list will be compared to the persons listed on the application to confirm that only members have been named as operators.
Must ensure that all officers, directors and operators have not been convicted of a felony, criminal fraud, a gambling or gambling-related offense, or a crime of moral turpitude if less than 10 years has elapsed since the termination of a sentence, parole, mandatory supervision, or community supervision served for the offense.	<p>A signed and dated copy of the most recent version of all of the organization's organizing instruments(s) that list the officer and director positions.</p> <p>Or</p> <p>If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors.</p> <p>If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.</p>

	<p>The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have been disclosed.</p> <p>The Department of Public Safety will conduct a criminal history check on all officers, directors and operators.</p> <p>Any officer, director or operator not meeting the criminal history background requirement must resign before a license may be issued.</p>
Section 2001.102 License Application Requirements	<p>If the organization is organized under the law of this state the organization must be in good standing with the Secretary of State, The Commission will request additional documentation from the applicant if we are unable to validate this directly.</p>

**Volunteer Fire Department:**

<b>Qualifications and Requirements</b>	<b>Necessary Documentation</b>
Organized primarily to provide fire-fighting services.	<p>Proof of membership in a professional fire fighting organization.</p> <p>Or</p> <p>A copy of a publication that lists the organization and its phone number to call in case of fire.</p> <p>Or</p> <p>A letter from a local government agency recognizing the organization as a volunteer fire department.</p> <p>Or</p> <p>A copy of all organizing instrument(s) which list this purpose for the organization.</p> <p>Or</p> <p>A dated newspaper article which details the organization's activities.</p> <p>The name of the applicant organization must match the name of the applicant on the documents submitted.</p>

Must have been organized in Texas for at least three years.	<p>If the applicant is affiliated with a state or national organization, Schedule G - Verification by Parent Organization.</p> <p>If the applicant is not affiliated with a state or national organization, a copy of a listing in a publication such as a national roster or newspaper article naming the organization.</p> <p>Or</p> <p>A letter to the applicant from a government agency.</p> <p>The document submitted must reflect the applicant's name, Texas address, and either be dated prior three years before the application date or establish the date the organization was founded.</p>
Must operate fire-fighting equipment.	<p>Pictures of fire equipment reflecting the name of the volunteer fire department.</p> <p>Or</p> <p>Copies of cancelled checks or invoices for fire-fighting equipment.</p>
May not pay members other than a nominal compensation.	<p>Most recent copy of IRS Form 990 if organization is required to file it with the Internal Revenue Service.</p> <p>Indicate on application if organization is not required to file Form 990.</p> <p>If not required to file Form 990, a copy of a volunteer fire fighter application.</p> <p>Or</p> <p>A copy of an organizing instrument that describes compensation of members.</p>
Must demonstrate significant progress toward the accomplishment of the organization's purposes during the 12 months preceding the date of application.	A Call List which shows the type of incident and location for the 12 month period prior to the date the application was signed.
May appoint only the organization's members to serve as operators.	<p>Current membership list with all officers and directors noted.</p> <p>Membership list will be compared to the persons</p>

	listed on application to confirm that only members have been named as operators.
Must ensure that all of your organization's officers, directors and operators have not been convicted of a felony, criminal fraud, a gambling or gambling-related offense, or a crime of moral turpitude if less than 10 years has elapsed since the termination of a sentence, parole, mandatory supervision, or community supervision served for the offense.	<p>A signed and dated copy of the most recent version of all of the organization's organizing instruments(s) that list the officer and director positions.</p> <p>Or</p> <p>If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors.</p> <p>If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.</p> <p>The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have been disclosed.</p> <p>The Department of Public Safety will conduct a criminal history check on all officers, directors and operators.</p> <p>Any officer, director or operator not meeting the criminal history background requirement must resign before a license may be issued.</p>
Section 2001.102 License Application Requirements	<p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation.</p> <p>If the organization is organized under the law of this state the organization must be in good standing with the Secretary of State, The Commission will request additional documentation from the applicant if we are unable to validate this directly.</p>

**Veteran Organization:**

<b>Qualifications and Requirements</b>	<b>Necessary Documentation</b>
Must be an unincorporated association or corporation.	<p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation.</p> <p>The name of the applicant organization must match the name of the organization on the organizing instruments.</p>

Must hold a valid 501(c) exemption through the Internal Revenue Service.	If the Commission is unable to validate directly with the Internal Revenue Service that the organization has a 501(c) designation, the Commission will request additional documentation from the applicant.
Must have been organized in Texas for at least three years.	Schedule G - Verification by Parent Organization.
May not distribute any income to members, officers, or governing body except as reasonable compensation for services.	Most recent copy of IRS Form 990 if organization is required to file it with the Internal Revenue Service.  Indicate on application if organization is not required to file Form 990.
Members must be veterans or dependents of veterans of the United States armed serves.	Schedule G - Verification by Parent Organization
Must be chartered by the United States Congress.	The Commission will review the list of chartered veteran organizations maintained by the United States Department of Veteran Affairs. Their website link is: <a href="http://www1.va.gov/vso/index.cfm?template=view">http://www1.va.gov/vso/index.cfm?template=view</a> .
Must be organized to advance the interest of veterans or active duty personnel of the US armed forces and their dependents.	A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation. The name of the applicant organization must match the name of the organization on the organizing instruments.
Must demonstrate significant progress toward the accomplishment of the organization's purposes during the 12 months preceding the date of application.	At least three (3) different types of acceptable documents as proof that organization was engaged in furthering its charitable purpose for the time period beginning one year prior to the date the application was signed. Examples of acceptable documentation include copies of: <ol style="list-style-type: none"> <li>1. activity reports filed with the state and/or national organization,</li> <li>2. monetary donations to Veterans Administration (VA) hospitals,</li> <li>3. letters of appreciation from veterans and/or organizations receiving benefits,</li> <li>4. support of and/or contributions to veterans' funerals and/or their families,</li> <li>5. visits to veteran's hospitals,</li> <li>6. newspaper articles, and</li> <li>7. Form 990</li> </ol> <p>To establish the beginning date, an organization may submit documentation dated up to three months prior to the year before the application was signed in order to prove that the organization has been engaged in furthering its charitable</p>

	purpose throughout the past twelve months. All documents must be dated and indicate the name of the organization.
May appoint only the organization's members to serve as operators.	A current membership list with all officers and directors noted. Membership list will be compared to the persons listed on the application to confirm that only members have been named as operators.
Must ensure that all of the organization's officers, directors and operators have not been convicted of a felony, criminal fraud, a gambling or gambling-related offense, or a crime of moral turpitude if less than 10 years has elapsed since the termination of a sentence, parole, mandatory supervision, or community supervision served for the offense.	<p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation that list the officer and director positions.</p> <p>Or</p> <p>If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors.</p> <p>If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.</p> <p>The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers have been disclosed.</p> <p>The Department of Public Safety will conduct a criminal history check on all officers, directors and operators.</p> <p>Any officer, director or operator not meeting the criminal history background requirement must resign before a license may be issued.</p>
Section 2001.102 License Application Requirements	If the organization is organized under the law of this state the organization must be in good standing with the Secretary of State, The Commission will request additional documentation from the applicant if we are unable to validate this directly.

**Fraternal Organization:**

<b>Qualifications and Requirements</b>	<b>Necessary Documentation</b>
Must be an Unincorporated Association or Corporation.	A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation. The name of the applicant organization must match the name of the organization on the



	organizing instruments.
Must be organized to perform and engage in charitable work.	<p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation.</p> <p>The name of the applicant organization must match the name of the organization on the organizing instruments.</p>
Must hold a valid 501c exemption through the Internal Revenue Service.	If the Commission is unable to validate directly with the Internal Revenue Service that the organization has a 501(c) designation, the Commission will request additional documentation from the applicant.
May not distribute any income to members, officers, or governing body except as reasonable compensation.	<p>Most recent copy of IRS Form 990 if organization is required to file it with the Internal Revenue Service.</p> <p>Indicate on application if organization is not required to file Form 990.</p> <p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation.</p>
Must have been organized in Texas for at least three years.	<p>Schedule G - Verification by Parent Organization if affiliated with a state or national organization.</p> <p>Or</p> <p>A copy of a listing in a publication such as a national roster or newspaper article if not affiliated with a state or national organization.</p> <p>Or</p> <p>A letter to the applicant from a government agency.</p> <p>The document submitted to confirm the requirement must reflect organization's name, a Texas address, and be either dated prior to the three year period or establish the date the organization was founded.</p>
Must have a bona fide membership.	Current membership list with all officers and directors noted.
Membership actively and continuously engaged in furthering its authorized purposes for the past three years.	<p>Organizing instrument(s) describing the organization's purposes.</p> <p>Copies of minutes from three annual membership meetings reflecting that the organization voted on the election of officers and reported on matters</p>

	<p>related to furthering the organization's purpose. Collectively, the three meeting minutes must encompass a (36) thirty-six month period (i.e. one per year).</p> <p>The meeting minutes must be dated and signed by an officer of the organization.</p>
May not authorize or support a public office candidate.	Organizing instrument(s) reflecting that organization has not authorized support or opposition of a public office candidate.
Must demonstrate significant progress toward the accomplishment of the organization's purposes during the 12 months preceding the date of application.	<p>At least three (3) different types of acceptable documents as proof that organization was engaged in furthering its charitable purpose for the time period beginning one year prior to the date the application was signed. Examples of acceptable documentation include copies of:</p> <ol style="list-style-type: none"> <li>1. cancelled checks,</li> <li>2. newspaper articles,</li> <li>3. brochures,</li> <li>4. receipts,</li> <li>5. meeting minutes, and</li> <li>6. IRS Form 990.</li> </ol> <p>All documents must be dated and indicate the organization's name.</p> <p>To establish the beginning date, an organization may submit documentation dated up to three months prior to the year before the application was signed in order to prove that the organization has been engaged in furthering its charitable purpose throughout the past twelve months.</p>
May appoint only the organization's members to serve as operators.	A current membership list with all officers and directors noted. Membership list will be compared to the persons listed on the application to confirm that only members have been named as operators.
Must ensure that all of the organization's officers, directors and operators have not been convicted of a felony, criminal fraud, a gambling or gambling-related offense, or a crime of moral turpitude if less than 10 years has elapsed since the termination of a sentence, parole, mandatory supervision, or community supervision served for the offense.	<p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation) that list the officer and director positions.</p> <p>Or</p> <p>If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors.</p> <p>If officer and/or director positions are unfilled, a</p>

	<p>statement signed by an officer indicating which positions are vacant.</p> <p>The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have been disclosed.</p> <p>The Department of Public Safety will conduct a criminal history check on all officers, directors and operators.</p> <p>Any officer, director or operator not meeting the criminal history background requirement must resign before a license may be issued.</p>
Section 2001.102 License Application Requirements	<p>If the organization is organized under the law of this state the organization must be in good standing with the Secretary of State, The Commission will request additional documentation from the applicant if we are unable to validate this directly.</p>

**Volunteer Emergency Medical Services Provider:**

<b>Qualifications and Requirements</b>	<b>Necessary Documentation</b>
Must have been organized in Texas for at least three years.	<p>If the applicant is affiliated with a state or national organization, Schedule G - Verification by Parent Organization.</p> <p>If the applicant is not affiliated with a state or national organization, a copy of a listing in a publication such as a national roster or newspaper article naming the organization.</p> <p>Or</p> <p>A letter to the applicant from a government agency.</p> <p>The document submitted must reflect the applicant's name, Texas address, and either be dated prior three years before the application date or establish the date the organization was founded.</p>
Must demonstrate that the organization has made significant progress toward the accomplishment of its purposes during the 12 months preceding the date of application.	A Call List which shows the type of incident and location for the 12 month period prior to the date the application was signed.
Must appoint only the organization's members to serve as operators for the organization.	A current membership list with all officers and directors noted. Membership list will be compared

	to the persons listed on the application to confirm that only members have been named as operators.
Must ensure that all of the organization's officers, directors and operators have not been convicted of a felony, criminal fraud, a gambling or gambling-related offense, or a crime of moral turpitude if less than 10 years has elapsed since the termination of a sentence, parole, mandatory supervision, or community supervision served for the offense.	<p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation) that list the officer and director positions.</p> <p>Or</p> <p>If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors.</p> <p>If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.</p> <p>The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have been disclosed.</p> <p>The Department of Public Safety will conduct a criminal history check on all officers, directors and operators.</p> <p>Any officer, director or operator not meeting the criminal history background requirement must resign before a license may be issued.</p>
Section 2001.102 License Application Requirements	<p>Most recent copy of IRS Form 990 if organization is required to file it with the Internal Revenue Service.</p> <p>Indicate on application if organization is not required to file Form 990.</p> <p>AND</p> <p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation.</p> <p>AND</p> <p>If the organization is organized under the law of this state the organization must be in good standing with the Secretary of State, The Commission will request additional documentation from the applicant if we are unable to validate this directly.</p>

Figure: 22 TAC §7.10(b)

<b>Fee Description</b>	<b>Architects</b>	<b>Landscape Architects</b>	<b>Interior Designers</b>
Exam Application	\$100	\$100	\$100
Examination	[4071]****	***	**
Registration by Examination--Resident	155	*355	*355
Registration by Examination--Nonresident	180	*380	*380
Reciprocal Application	150	150	150
Reciprocal Registration	*400	*400	*400
Active Renewal--Resident	*305	*305	*305
Active Renewal--Nonresident	*400	*400	*400
Active Renewal 1-90 days late--Resident	*457.50	*457.50	*457.50
Active Renewal greater than 90 days late--Resident	*610	*610	*610
Active Renewal 1-90 days late--Nonresident	*600	*600	*600
Active Renewal greater than 90 days late--Nonresident	*800	*800	*800
Emeritus Renewal--Resident	10	10	10
Emeritus Renewal--Nonresident	10	10	10
Emeritus Renewal 1-90 days late--Resident	15	15	15
Emeritus Renewal greater than 90 days late--Resident	20	20	20
Emeritus Renewal 1-90 days late--Nonresident	15	15	15
Emeritus Renewal greater than 90 days late--Nonresident	20	20	20
Inactive Renewal--Resident	25	25	25
Inactive Renewal--Nonresident	125	125	125
Inactive Renewal 1-90 days late--Resident	37.50	37.50	37.50
Inactive Renewal greater than 90 days late--Resident	50	50	50
Inactive Renewal 1-90 days late--Nonresident	187.50	187.50	187.50
Inactive Renewal greater than 90 days late--Nonresident	250	250	250
Reciprocal Reinstatement	610	610	610
Change in Status--Resident	65	65	65
Change in Status--Nonresident	95	95	95

Reinstatement--Resident	685	685	685
Reinstatement--Nonresident	775	775	775
Certificate of Standing--Resident	30	30	30
Certificate of Standing--Nonresident	40	40	40
Replacement or Duplicate Wall Certificate--Resident	40	40	40
Replacement of Duplicate Wall Certificate--Nonresident	90	90	90
Duplicate Pocket Card	5 [0]	5 [0]	5 [0]
Reopen Fee for closed candidate files	25	25	25
Examination--Administrative Fee	-	40	-
Examination--Record Maintenance	25	25	25
Returned Check Fee	25	25	25
Application by Prior Examination	-	-	100
[Administrative Fee for 1 Hour LARE Review]	[-]	[17]	[-]

\*These fees include a \$200 professional fee required by the State of Texas and deposited with the State Comptroller of Public Accounts into the General Revenue Fund. The fee for initial architectural registration by examination does not include the \$200 professional fee. Under the statute, the professional fee is imposed only upon each renewal of architectural registration.

~~\*\*Examination fees are set by the Board examination provider, the National Council for Interior Design Qualification ("NCIDQ"). [NCIDQ fee: 2008 \$720, 2009 \$730. Specified amounts are maximum estimates made by NCIDQ, the examination provider for the entire examination.] Contact the Board or the examination provider for the amount of the fee, and the date and location where [for] each section of the examination is to be given.~~

~~\*\*\*Examination fees are set by the Board's examination provider, the Council of Landscape Architectural Registration Boards ("CLARB"). [LARE fee: Fiscal Year 2008 \$935, Fiscal Year 2009 \$950. Specified amounts are estimates made by CLARB, the examination provider for the entire examination.] Contact the Board or the examination provider for the amount of the fee, and the date and location where [for] each section of the examination is to be given.~~

~~\*\*\*\*Examination fees are set by the Board's examination provider, the National Council of Architectural Registration Boards ("NCARB"). Contact the Board or the examination provider for the amount of the fee, and the date and location where each section of the examination will be given. [Fee for ARE Version 3.1. The fee for ARE 4.0 which is available July 2008 is \$1190.]~~

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Office of the Attorney General

### Notice of Settlement of a Texas Water Code Enforcement Action

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to §7.110 of the Texas Water Code the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title: *State of Texas v. City of Port Arthur, Texas*; No. D-1-GV-07-1556; In the District Court of Travis County, Texas, 126th Judicial District.

Background: On April 20, 1999, the Texas Natural Resource Conservation Commission issued an agreed order entitled "In the Matter of an Enforcement Action Concerning the City of Port Arthur; Permit Nos. 10364-001 and 10364-002; Enforcement ID Nos. 8621 and 8622, Docket No. 98-0261-MWD-E" (the "Agreed Order"). The Agreed Order concerned two wastewater treatment plants permitted under the Texas Pollution Discharge Elimination System ("TPDES"): the Main Plant (TPDES Permit No. 10364-001); and the Port Acres Plant (TPDES Permit No. 10364-002). On July 24, 2007, the State of Texas brought a legal action in the district court alleging that the City had violated the Agreed Order and the TPDES permits, and seeking civil penalties, injunctive relief and attorneys' fees.

Nature of the Settlement: The case is to be settled by an agreed final judgment and permanent injunction in the district court.

Proposed Settlement: The proposed judgment provides for civil penalties, injunctive relief, and attorneys' fees.

The Office of the Attorney General will accept written comments relating to the proposed judgment for thirty (30) days from the date of publication of this notice. Copies of the proposed judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas. A copy of the proposed judgment may also be obtained in person or by mail at the above address for the cost of copying. Requests for copies of the judgment, and written comments on the same, should be directed to Thomas H. Edwards, Assistant Attorney General, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548; telephone (512) 463-2012, fax (512) 320-0052.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-200903749  
Stacey Napier  
Deputy Attorney General  
Office of the Attorney General  
Filed: August 25, 2009

## Brazos Valley Council of Governments

### Request for Proposals for Automated External Defibrillators

Purchasing Solutions Alliance (PSA), acting on behalf of its Members, is soliciting proposals for Automated External Defibrillators (AED), program management, training services and supplies. Sealed proposals for RFP No. 09-100 will be accepted until 2:00 p.m., Friday, September 18, 2009. Proposal requirements and specifications is on file and may be obtained at the offices of Purchasing Solutions Alliance (a program of the Brazos Valley Council of Governments) located at 3991 East 29th St., Bryan, Texas 77802. For information regarding the RFP, contact Michael Lucas, Senior Contract Officer at (979) 595-2801 Extension 2035 or by email at [mlucas@bvcog.org](mailto:mlucas@bvcog.org)

PSA reserves the right to reject any or all proposals and to waive informalities and irregularities.

TRD-200903750  
Tom Wilkinson  
Executive Director  
Brazos Valley Council of Governments  
Filed: August 25, 2009

## Comptroller of Public Accounts

### Certification of the Average Taxable Price of Gas and Oil - July 2009

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period July 2009, as required by Tax Code, §202.058, is \$48.88 per barrel for the three-month period beginning on April 1, 2009, and ending June 30, 2009. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of July 2009, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period July 2009, as required by Tax Code, §201.059, is \$3.06 per mcf for the three-month period beginning on April 1, 2009, and ending June 30, 2009. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of July 2009, from a qualified Low-Producing Gas Well, is eligible for 25% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-200903676  
Martin Cherry  
General Counsel  
Comptroller of Public Accounts  
Filed: August 21, 2009

### Notice of Availability and Request for Applications

Pursuant to Chapter 403, §403.352 and §403.358, Texas Government Code; Chapter 134, §134.002 and §134.008, Texas Education Code; and House Bill Nos. 3 and 1935, 81st Texas Legislature, Regular Session (2009), the Comptroller of Public Accounts (Comptroller), announces this Notice of Availability and Request for Applications (RFA #N-G-1) and invites applications from qualified and interested non-profit organizations in order to develop, support, or expand programs that prepare low-income students for careers in high-demand occupations and meet the requirements consistent with the terms of this Request for Applications and notice. The Comptroller reserves the right to award more than one grant under the terms of this RFA. If a grant award is made under the terms of this RFA, the recipient should anticipate an effective date no earlier than October 21, 2009, or as soon thereafter as practical.

Contact: Parties interested in submitting an application may contact the JET Program, Comptroller of Public Accounts, in the Issuing Office at: 111 E. 17th St., Room 510, Austin, Texas 78774, (512) 936-2064. The Comptroller will mail copies of the application and instructions only to those parties specifically requesting a copy. The application and instructions will be available at <http://www.everychanceeverytexas.org/funds> after 10:00 a.m. CZT on Friday, September 4, 2009, and during normal business hours thereafter.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and Non-mandatory Letters of Intent must be received at the above-referenced address not later than 2:00 p.m. CZT on Friday, September 11, 2009. Prospective applicants are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 463-4208 to ensure timely receipt. Non-mandatory Letters of Intent must be addressed to Kevin Deiters, Director, Educational Opportunities & Investment Division, Comptroller of Public Accounts, at: 111 E. 17th St., Room 510, Austin, Texas 78774 and be signed by an official of that entity. On or about Friday, September 18, 2009, the Comptroller expects to post responses to questions at <http://www.everychanceeverytexas.org/funds>. Late Non-mandatory Letters of Intent and Questions will not be considered under any circumstances. Applicants shall be solely responsible for verifying timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Applications must be delivered in the Issuing Office to the attention of the Director no later than 2:00 p.m. CZT, on Friday, September 25, 2009. Late applications will not be considered under any circumstances. Applicants shall be solely responsible for verifying the timely receipt of Applications in the Issuing Office.

Evaluation Criteria: Applications will be evaluated under the evaluation criteria outlined in the application instructions. The Comptroller will make the final decision. The Comptroller reserves the right to accept or reject any or all applications submitted. The Comptroller is not obligated to make a grant award or to execute a contract on the basis of this notice or RFA. The Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or RFA.

The anticipated schedule of events pertaining to this grant is as follows: Issuance of RFA - September 4, 2009, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - September 11, 2009, 2:00 p.m. CZT; Official Responses to Questions posted - September 18, 2009; Applications Due - September 25, 2009, 2:00 p.m. CZT; Grant Award/Contract Execution - October 21, 2009, or as soon thereafter as practical; Commencement of Grant Funding - October 21, 2009, or as soon thereafter as practical.

TRD-200903761

William Clay Harris  
Assistant General Counsel, Contracts  
Comptroller of Public Accounts  
Filed: August 26, 2009



## Notice of Availability and Request for Applications

Pursuant to Chapter 403, §403.352 and §403.358, Texas Government Code; Chapter 134, §134.002 and §134.008, Texas Education Code; and House Bill Nos. 3 and 1935, 81st Texas Legislature, Reg. Sess. (2009), the Comptroller of Public Accounts (Comptroller), announces this Notice of Availability and Request for Applications (RFA #S-G-1) and invites applications from qualified, interested public junior colleges and public technical institutes for Jobs and Education for Texans (JET) grants consistent with the terms of this Request for Applications and notice. The Comptroller reserves the right to award more than one grant under the terms of this RFA. If a grant award is made under the terms of this RFA, the recipient should anticipate an effective date no earlier than October 21, 2009, or as soon thereafter as practical.

Contact: Parties interested in submitting an application may contact the JET Program, Comptroller of Public Accounts, in the Issuing Office at: 111 E. 17th St., Room 510, Austin, Texas 78774, (512) 936-2064. The Comptroller will mail copies of the application and instructions only to those parties specifically requesting a copy. The application and instructions will be made available at <http://www.everychanceeverytexas.org> on Friday, September 4, 2009, after 10:00 a.m. Central Zone Time (CZT) and during normal business hours thereafter.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and Non-mandatory Letters of Intent must be received at the above-referenced address not later than 2:00 p.m. CZT on Friday, September 11, 2009. Prospective applicants are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 463-4208 to ensure timely receipt. Non-mandatory Letters of Intent must be addressed to Kevin Deiters, Director, Educational Opportunities & Investment Division, Comptroller of Public Accounts, at: 111 E. 17th St., Room 510, Austin, Texas 78774, and must be signed by an official of that entity. On or about Friday, September 18, 2009, the Comptroller expects to post responses to questions on the following website: <http://www.everychanceeverytexas.org>. Late Non-mandatory Letters of Intent and Questions will not be considered under any circumstances. Applicants shall be solely responsible for verifying timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Applications must be delivered in the Issuing Office to the attention of the Director no later than 2:00 p.m. CZT, on Friday, September 25, 2009. Late applications will not be considered under any circumstances. Applicants shall be solely responsible for verifying the timely receipt of Applications in the Issuing Office.

Evaluation Criteria: Applications will be evaluated under the evaluation criteria outlined in the application instructions. The Comptroller will make the final decision. The Comptroller reserves the right to accept or reject any or all applications submitted. The Comptroller is not obligated to make a grant award or to execute a contract on the basis of this notice or the distribution of any RFA. The Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or RFA.

The anticipated schedule of events pertaining to this grant is as follows: Issuance of RFA - September 4, 2009, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - September 11, 2009, 2:00 p.m. CZT; Official Responses to Questions posted - September 18, 2009; Applications Due - September 25, 2009, 2:00 p.m. CZT; Grant Award/Contract Execution - October 21, 2009, or as soon thereafter as



practical; Commencement of Grant Funding - October 21, 2009, or as soon thereafter as practical.

TRD-200903762

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: August 26, 2009



#### Notice of Award

Pursuant to Chapter 2254, Subchapter B, Chapter 403, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of award of a contract to Thomas Wade, 341 Jefferson, Cat Spring, Texas 78933 in connection with the Request for Proposals (RFP #195a) for appraisal standards reviews of selected county appraisal districts and other related consulting services. The total amount of the contract is not to exceed \$150,000.00. The term of the contract is August 19, 2009 through December 31, 2010.

The notice of request for proposals (RFP #195a) was published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4358). The report is due on or before August 31, 2010.

TRD-200903664

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: August 20, 2009



#### Notice of Contract Amendment

The Comptroller of Public Accounts (Comptroller) announces the amendment of the following contract:

The notice of request for proposals (RFP #185a) was published in the May 2, 2008, issue of the *Texas Register* (33 TexReg 3670). The Notice of Award was published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 8050).

The contractor provides investment consulting services to the Comptroller and the Texas Prepaid Higher Education Tuition Board.

The contract was awarded to Ennis, Knupp & Associates, Inc., 10 South Riverside Plaza, Suite 1600, Chicago, Illinois 60606. The original total amount of the contract was not to exceed \$200,000.00. The term of the contract is August 27, 2008 through August 31, 2010, with option to renew for up to two (2) additional one (1) year periods, one (1) year at a time. The amendment adds revises the total amount of the contract to not to exceed \$300,000.00 per year.

TRD-200903688

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: August 21, 2009



#### Notice of Contract Awards

Pursuant to Chapter 403, Chapter 2254, Subchapter A, Texas Government Code, and Chapter 111 Texas Tax Code, the Comptroller of Public Accounts (Comptroller) announces this notice of contract awards.

The Comptroller's Request for Qualifications (RFQ #192h) related to these contract awards was published in the May 8, 2009, issue of the *Texas Register* (34 TexReg 2823).

The contractors will provide Professional Contract Auditing Services as authorized by Subchapter A, Chapter 111, §111.0045 of the Texas Tax Code as described in the Comptroller's RFQ.

The Comptroller announces that nine (9) contracts were awarded as of August 21, 2009 as follows:

A contract is awarded to Nedzra J. Ward, 11403 Kay Lane, Pearland, Texas 77584-7270. Examinations will be assigned in \$60,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2009 through August 31, 2010, with two (2) one (1) year options to renew.

A contract is awarded to Sam W. Armstrong, P.C., 931 Kentbury Court, Katy, Texas 77450. Examinations will be assigned in \$60,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2009 through August 31, 2010, with two (2) one (1) year options to renew.

A contract is awarded to Melanie C. Bowman and Wayne F. Bowman, 2225 Potomac Drive, Unit C, Houston, Texas 77057. Examinations will be assigned in \$60,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2009 through August 31, 2010, with two (2) one (1) year options to renew.

A contract is awarded to James Park, 10491 Park Lane, Kountze, Texas 77625. Examinations will be assigned in \$60,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2009 through August 31, 2010, with two (2) one (1) year options to renew.

A contract is awarded to Texas Tax Consulting Group, L.C., 6116 Ayers Street, Suite 2C, Corpus Christi, Texas 78415. Examinations will be assigned in \$60,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2009 through August 31, 2010, with two (2) one (1) year options to renew.

A contract is awarded to Gordon Wheeler, 8410 Neff Street, Houston, Texas 77036. Examinations will be assigned in \$60,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2009 through August 31, 2010, with two (2) one (1) year options to renew.

A contract is awarded to Cindy Alvarez, 3820 Ashbury Lane, Bedford, Texas 76021. Examinations will be assigned in \$60,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2009 through August 31, 2010, with two (2) one (1) year options to renew.

A contract is awarded to Jean Chan, 6119 Jereme Trail, Dallas, Texas 75252. Examinations will be assigned in \$60,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2009 through August 31, 2010, with two (2) one (1) year options to renew.

A contract is awarded to Cindy H. Coats, CPA, 212 W. Legend Oaks Drive, Georgetown, Texas 78628-5003. Examinations will be assigned in \$60,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2009 through August 31, 2010, with two (2) one (1) year options to renew.

The Comptroller anticipates the award of one (1) additional contract.

TRD-200903731

Pamela G. Smith

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: August 24, 2009

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/31/09 - 09/06/09 is 18% for Consumer <sup>1</sup>/Agricultural/Commercial <sup>2</sup>/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/31/09 - 09/06/09 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-200903755

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: August 26, 2009

## Deep East Texas Council of Governments

### Request for Proposals - Social Services Block Grant - Hurricane Ike

#### Overview

The Deep East Texas Council of Governments (DETCOG) is now accepting bids from qualified organizations to provide social and health services for individuals who have been affected by Hurricane Ike. A proposal package (RFP and attachments) will be available for download at [www.detcog.org](http://www.detcog.org) beginning 12 noon CST on Tuesday, September 1, 2009. Hard copies of the proposal package will also be made available at that time and may be picked up at the DETCOG office at 210 Premier Drive; Jasper, Texas 75951.

Proposals are due at DETCOG office on or before 3 p.m. CST Wednesday, September 30, 2009. Mailed proposals must be postmarked no later than Monday, September 28, 2009. No late applications will be accepted and no exceptions will be made. Incomplete proposals will not be considered.

For questions or to request proposal packages contact Shanna Fuller.

Phone: (409) 384-5704 ext. 292

Fax: (409) 384-5390

Email: [sfuller@detcog.org](mailto:sfuller@detcog.org).

TRD-200903760

Walter G. Diggles, Sr.

Executive Director

Deep East Texas Council of Governments

Filed: August 26, 2009

## Texas Education Agency

### Request for Applications Concerning Algebra Readiness, Cycle 1, Grant

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-09-122 for the Algebra Readiness, Cycle 1, grant from school districts and/or open-enrollment charter schools in Texas on behalf of campuses that meet the following criteria: (1) the campus must serve students in Grades 6 - 8 or 7 - 8; and (2) 65 percent or fewer students in Grades 7 and 8 (calculated as a combined average) met the passing standard on the mathematics portion of the Texas Assessment of Knowledge and Skills (TAKS) on the first administration when averaged over the preceding three school years (2006 - 2007, 2007 - 2008, and 2008 - 2009).

School districts and open-enrollment charter schools must submit a separate application for each eligible campus. Shared service arrangements are not permitted for this grant application. A school district or open-enrollment charter school may not apply for funding under this grant program for a campus that has not been serving students in Grades 7 - 8 for the three preceding school years (2006 - 2007, 2007 - 2008, and 2008 - 2009).

The competitive nature of the Algebra Readiness, Cycle 1, grant application will be based upon eligible campuses being rank ordered according to average passing rates on the mathematics portion of the TAKS; the total number of students in Grades 6 - 8 or 7 - 8 at or above 400; and the average rate of improvement for passing rates on the mathematics portion of the TAKS. Refer to the RFA for specific details of the ranking process.

Funding will be distributed from highest-ranking campuses to lowest-ranking campuses until all available funds have been awarded. Applications must be submitted by the deadline to be eligible for ranking and consideration for funding.

Description. The purpose of the Algebra Readiness, Cycle 1, grant is to implement programs that increase the preparedness of middle school students to meet standards and pass future assessments in Algebra I. Intervention programs should be designed to increase teachers' mathematics content knowledge for instructional effectiveness in order to improve performance for struggling students and those at risk for failure in mathematics; equip school leaders to support and facilitate teachers' efforts to increase student achievement in mathematics; and provide targeted intervention services to middle school students identified as unlikely to meet the end-of-course standard in future Algebra I assessments.

Dates of Project. The Algebra Readiness, Cycle 1, grant will be implemented during the 2009 - 2010, 2010 - 2011, and 2011 - 2012 school years. Applicants should plan for a starting date of no earlier than January 1, 2010, and an ending date of no later than May 31, 2012.

Project Amount. Approximately \$23.5 million is available for funding Algebra Readiness, Cycle 1, grants during the January 1, 2010, through May 31, 2012, project period. It is anticipated that 50 to 80 projects will be funded during the first cycle of this grant. The maximum award per campus is \$235,000. This project is 100 percent state funded by the General Appropriations Act, Article III, Rider 42, Student Success Initiative, 81st Texas Legislature, 2009.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. RFAs are no longer available in print. The announcement letter and complete RFA will be posted on the TEA website at <http://burleson.tea.state.tx.us/GrantOpportunities/forms> for viewing and downloading. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the RFA, contact Mona Corbett, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in Part 2: Program Guidelines of the RFA at [algebrae@tea.state.tx.us](mailto:algebrae@tea.state.tx.us). All questions and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at <http://burleson.tea.state.tx.us/GrantOpportunities/forms>. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Thursday, October 29, 2009, to be eligible to be considered for funding.

TRD-200903765

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: August 26, 2009

## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 5, 2009**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the

commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 5, 2009**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Accent Collision Center, Inc.; DOCKET NUMBER: 2009-0879-AIR-E; IDENTIFIER: RN105707152; LOCATION: Abilene, Taylor County; TYPE OF FACILITY: auto body refinishing plant; RULE VIOLATED: 30 Texas Administrative Code (TAC) §116.110(a) and Texas Health and Safety Code (THSC), §382.0158(a) and §382.085(b), by failing to obtain a permit authorization; PENALTY: \$750; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(2) COMPANY: City of Brownwood; DOCKET NUMBER: 2009-1269-WQ-E; IDENTIFIER: RN101612869; LOCATION: Brownwood, Brown County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(3) COMPANY: Mike Arena dba Buckhorn Soil and Stone; DOCKET NUMBER: 2009-0739-EAQ-E; IDENTIFIER: RN105718787; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: retail, commercial business for the sale of soil and stone materials; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an aboveground storage tank (AST) facility plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$2,700; ENFORCEMENT COORDINATOR: Carlie Konkol, (361) 825-3100; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: C & R DISTRIBUTING, INC. dba Franklin Chevron; DOCKET NUMBER: 2009-0653-PST-E; IDENTIFIER: RN104670088; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: \$4,447; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(5) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2009-0602-AIR-E; IDENTIFIER: RN100229319; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: natural gas liquids fractionation plant; RULE VIOLATED: 30 TAC §116.115(c), New Source Review (NSR) Permit Number 21593, Special Condition (SC) Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(b)(1)(G) and THSC, §382.085(b), by failing to report all compounds involved in the emissions event occurring during a 17 hour period on November 5, 2008; PENALTY: \$4,900; ENFORCEMENT COORDINATOR: Juliet Morgan, (512)

239-0735; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: George Ted Devries dba Devries Dairy; DOCKET NUMBER: 2009-0488-AGR-E; IDENTIFIER: RN100802917; LOCATION: Dublin, Erath County; TYPE OF FACILITY: concentrated animal feeding operation (CAFO); RULE VIOLATED: 30 TAC §321.33(g), by failing to obtain an amendment to Permit Number 03061 prior to making any modification to the facility; 30 TAC §305.125(1), by failing to construct and maintain waste control facilities so as to retain all contaminated rainfall runoff from open lots and associated areas and process generated wastewater; 30 TAC §321.40(7) and the Code, §26.121(a), by failing to maintain at least 100 feet buffer zone between waste or wastewater application areas and surface water areas and watercourses; 30 TAC §321.39(f)(28)(G), by failing to operate in accordance with a comprehensive nutrient management plan; 30 TAC §305.125(1) and Permit Number 03061, Section VI, Special Provision Number 9, by failing to submit the 2007 third quarter soil sample results to the TCEQ Enforcement Division and regional offices; and 30 TAC §321.39(f)(28)(G), by failing to discontinue waste application on all land management units before exceeding maximum allowable 205 parts per million extractable phosphorus application rates stated in the nutrient management plan; PENALTY: \$28,755; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Eagle Rock Desoto Pipeline, L.P.; DOCKET NUMBER: 2009-0790-AIR-E; IDENTIFIER: RN105085054; LOCATION: Nacogdoches County; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit (FOP) Number 2997, General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to timely submit an annual permit compliance certification report; PENALTY: \$1,975; ENFORCEMENT COORDINATOR: Raymond Marlow, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: Laxmiben Lalbhai Patel, Maganbhai Ranchlodbhai Patel, Bhagubhai Bhulo Patel, and Vinubhai Bhulo Patel dba Holiday Motel; DOCKET NUMBER: 2009-0671-MWD-E; IDENTIFIER: RN101518843; LOCATION: Cleveland, Liberty County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §§319.6, 319.9(c), and 319.11, by failing to perform quality assurance/quality control analysis to assure the quality of all measurements; 30 TAC §305.125(5) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0012161001, Operational Requirements Number 1, by failing to properly operate and maintain the facility and all of its systems of collection, treatment, and disposal; 30 TAC §305.125(1) and §319.7(c) and TPDES Permit Number WQ0012161001, Monitoring and Reporting Requirements Number 3.b., by failing to have all required monitoring and reporting records available for review upon request; 30 TAC §305.125(1) and TPDES Permit Number WQ0012161001, Definitions and Standard Permit Conditions Number 2.f., by failing to properly calculate daily average loading; 30 TAC §§305.125(1), 319.1, and 319.7(d) and TPDES Permit Number WQ0012161001, Monitoring and Reporting Requirements Number 1, by failing to timely submit monthly effluent report by the 20th day of the following month; 30 TAC §305.125(1) and §305.125(11)(B) and TPDES Permit Number WQ0012161001, Sludge Provisions, Section II.E., by failing to have all required sludge management records available for review upon request; 30 TAC §305.125(1), TPDES Permit Number WQ0012161001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 6, Agreed Order Docket Number 2007-0027-MWD-E, Ordering Provision

Number 3.b., and the Code, §26.121(a), by failing to comply with the permitted effluent limitations; 30 TAC §305.125(1) and TPDES Permit Number WQ0012161001, Monitoring and Reporting Requirement Number 7.c., by failing to submit noncompliance notification reports for effluent violations which deviate from the permitted effluent limitation by more than 40%; and 30 TAC §305.125(17) and §319.1 and TPDES Permit Number WQ0012161001, Sludge Provisions, by failing to submit annual sludge reports; PENALTY: \$56,465; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: HPT TA Properties Trust dba Terrell Travel Center; DOCKET NUMBER: 2009-0786-PST-E; IDENTIFIER: RN102891850; LOCATION: Terrell, Kaufman County; TYPE OF FACILITY: travel center with retail sales of gasoline and diesel fuel; RULE VIOLATED: 30 TAC §334.48(a) and the Code, §26.121, by failing to prevent an unauthorized discharge of a regulated substance into water in the state; 30 TAC §334.49(a)(4) and the Code, §26.3475(d), by failing to provide corrosion protection to all underground components of an underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that all USTs are monitored in a manner which will detect a release; 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide release detection for the piping associated with the USTs; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; 30 TAC §334.51(a)(6) and the Code, §26.3475(c)(2), by failing to ensure that all spill and overfill prevention devices are maintained in good operating condition and that such devices are inspected and serviced in accordance with manufacturers' specifications; 30 TAC §334.45(c)(3)(A), by failing to install an emergency shutoff valve on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser; and 30 TAC §334.45(e)(2)(D), by failing to equip all fill pipes in a new UST system with a removable or permanent factory-constructed drop tube which shall extend 12 inches of the tank bottom; PENALTY: \$22,598; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: City of Leonard; DOCKET NUMBER: 2009-0661-MWD-E; IDENTIFIER: RN101919322; LOCATION: Leonard, Fannin County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010920001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for five-day carbonaceous biochemical oxygen demand, ammonia-nitrogen, and flow; PENALTY: \$8,010; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 425-6010; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Ed Matlock; DOCKET NUMBER: 2009-0780-LII-E; IDENTIFIER: RN105715643; LOCATION: Round Rock, Williamson County; TYPE OF FACILITY: landscaping business; RULE VIOLATED: 30 TAC §30.5(b) and §344.30, the Code, §37.003, and Texas Occupations Code, §1903.251, by failing to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required; PENALTY: \$250; ENFORCEMENT COORDINATOR: John Shelton, (512) 239-2563; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(12) COMPANY: NIPCO, Inc.; DOCKET NUMBER: 2009-0771-AIR-E; IDENTIFIER: RN100633601; LOCATION: Odessa, Ector County; TYPE OF FACILITY: electroplating plant; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain permit authorization for a source of air emissions or satisfy the conditions of a permit by rule prior to the commencement of outdoor dry abrasive cleaning operations; and 30 TAC §111.201 and THSC, §382.085(b), by failing to prevent unauthorized outdoor burning; PENALTY: \$2,900; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 3300 North A Street, Building 4-107, Midland, Texas 79705-5406, (432) 570-1359.

(13) COMPANY: PINE COVE, INC.; DOCKET NUMBER: 2009-0962-MWD-E; IDENTIFIER: RN105158109; LOCATION: Colorado County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0-0014779001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with permitted effluent limits for total suspended solids; PENALTY: \$1,900; ENFORCEMENT COORDINATOR: Heather Brister, (254) 754-0335; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: City of Robert Lee; DOCKET NUMBER: 2009-0625-MLM-E; IDENTIFIER: RN101198174, RN101920163; LOCATION: Robert Lee, Coke County; TYPE OF FACILITY: public water supply and wastewater treatment plant; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the maximum contaminated level for total trihalomethanes; and 30 TAC §305.125(1), TPDES Permit Number WQ0013901001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations; PENALTY: \$11,174; Supplemental Environmental Project (SEP) offset amount of \$11,174 applied to Texas Association of Resource Conservation and Development Areas, Inc. (RC&D) - Abandoned Tire Clean-Up; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 425-6010; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(15) COMPANY: Round Rock Independent School District; DOCKET NUMBER: 2009-0726-EAQ-E; IDENTIFIER: RN105713648; LOCATION: Round Rock, Williamson County; TYPE OF FACILITY: future elementary school; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a Water Pollution Abatement Plan; PENALTY: \$7,000; SEP offset amount of \$5,600 applied to RC&D - Abandoned Tire Clean-Up; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 425-6010; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(16) COMPANY: Tapia Dairy, Inc.; DOCKET NUMBER: 2009-0651-AGR-E; IDENTIFIER: RN102078649; LOCATION: Runnels County; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §305.125(1) and General Permit Number TXG920973, Part III.A.6(c)(2) and 10(b), by failing to ensure good drainage from the earthen calf pens; PENALTY: \$1,290; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(17) COMPANY: Tenet Hospitals Limited; DOCKET NUMBER: 2009-0582-AIR-E; IDENTIFIER: RN100223858; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: medical assistance site; RULE VIOLATED: 30 TAC §§122.143(4), 122.145(2)(A), and 122.146(1), FOP Number O-01246, GTC, and THSC, §382.085(b), by failing to submit the permit compliance certification; 30 TAC §122.143(4), FOP Number O-01246, GTC and SC Number 3, and THSC, §382.085(b), by failing to conduct annual visible emissions

observations of the co-generation unit; and 30 TAC §106.417(2)(E)(i) - (iii) and THSC, §382.085(b), by failing to operate the ethylene oxide sterilizers with a vent stack exhausting vertically upward, at least 15 feet above the roof line, and with an exit velocity of at least 50 feet per second; PENALTY: \$19,331; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(18) COMPANY: Texas Petrochemicals, LLC; DOCKET NUMBER: 2009-0524-AIR-E; IDENTIFIER: RN104964267; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §§116.115(c), 116.116(b), and 122.143(4), NSR Permit Number 20485, SC Number 21.A., FOP Number O-01327, Special Terms and Conditions Number 15, and THSC, §382.085(b), by failing to comply with the rolling 12 month annual raffinate loading throughput limits as required by the confidential section of the permit application submitted on April 6, 2006, Appendix B of the raffinate 1 loading amendment application; PENALTY: \$10,200; SEP offset amount of \$4,080 applied to Texas Parent Teacher Association - *Clean School Bus Program*; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(19) COMPANY: Dirk Vereecken dba Vereecken Dairy; DOCKET NUMBER: 2009-0664-AGR-E; IDENTIFIER: RN102328523; LOCATION: Hopkins County; TYPE OF FACILITY: CAFO; RULE VIOLATED: 30 TAC §321.40(d) and (e) and General Permit Number TXG920669, Part III.A.11.(b)(1) and (d)(1), by failing to prevent the discharge of wastewater associated from the operation of a CAFO; and 30 TAC §321.40(h) and General Permit Number TXG920669, Part III.A.11.(f)(1), by failing to maintain a vegetative buffer of 100 feet between manure, litter, and wastewater application areas and all surface water and watercourses; PENALTY: \$6,600; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(20) COMPANY: John Rahimi and Ramin Ahmad dba Watauga Quick Stop; DOCKET NUMBER: 2009-0453-PST-E; IDENTIFIER: RN101433480; LOCATION: Watauga, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that all USTs are monitored in a manner which will detect a release; 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide release detection for the piping associated with the USTs; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; 30 TAC §334.51(b)(2)(C) and the Code, §26.3475(c)(2), by failing to equip each tank with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches no higher than 95% capacity; 30 TAC §115.244(1) and (3) and THSC, §382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system (VRS); 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II VRS, and each employee receives in-house Stage II vapor recovery training regarding the purpose and operation of the VRS; 30 TAC §115.246(1) and (3) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for inspection upon

request; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifold and dynamic back pressure at least once every 36 months or upon major system replacement or modification; 30 TAC §115.242(1)(C) and THSC, §382.085(b), by failing to upgrade the Stage II equipment to onboard refueling vapor recovery compatible systems; 30 TAC §115.242(3)(E) and THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition and free of defects that would impair the effectiveness of the system; and 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II VRS; PENALTY: \$15,658; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: City of Wellman; DOCKET NUMBER: 2009-0627-MWD-E; IDENTIFIER: RN102074879; LOCATION: Wellman, Terry County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(17) and TCEQ Permit Number WQ0013642001, Sludge Provisions, by failing to submit the annual sludge report; and 30 TAC §305.125(1) and TCEQ Permit Number WQ0013642001, Effluent Limitations and Monitoring Requirements A, by failing to comply with permitted effluent limits for five-day biochemical oxygen demand; PENALTY: \$6,720; SEP offset amount of \$5,376 applied to RC&D - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(22) COMPANY: Yoonason, LLC dba Econo Lube N Tune 239; DOCKET NUMBER: 2009-0610-PST-E; IDENTIFIER: RN102038130; LOCATION: Carrollton, Dallas County; TYPE OF FACILITY: vehicle maintenance; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection; 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information regarding the USTs; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the UST for releases; 30 TAC §334.50(b)(2)(B)(i)(I) and the Code, §26.3475(b), by failing to conduct triennial piping tightness test; and 30 TAC §334.51(c)(3), by failing to maintain a transfer log or inventory records to document the total volume, per occurrence, of a petroleum substance that is deposited into the UST system; PENALTY: \$7,747; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200903741

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: August 25, 2009



#### Enforcement Orders

An agreed order was entered regarding Citgo Refining and Chemicals Company, L.P., Docket No. 2002-0290-AIR-E on August 12, 2009 assessing \$68,640 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MBE, Inc. dba Bryans 2, Docket No. 2003-1144-PST-E on August 12, 2009 assessing \$5,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Citgo Refining and Chemicals Company, L.P., Docket No. 2004-1279-AIR-E on August 12, 2009 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding James C. Dunn dba Fillmore Cleaners, Docket No. 2006-0992-DCL-E on August 12, 2009 assessing \$3,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tommy Henson, Staff Attorney at (512) 239-0946, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Denison Snow White Laundry, LLC dba Shaffer Cleaners and dba Snow White aka Snow White Laundry, Docket No. 2006-1468-DCL-E on August 12, 2009 assessing \$2,370 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Leading Edge Aviation Services Amarillo, Inc., Docket No. 2007-0516-IHW-E on August 12, 2009 assessing \$41,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-3016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ruth Ann Smith dba Smiths Hardware & More, Docket No. 2007-0943-PST-E on August 12, 2009 assessing \$22,000 in administrative penalties with \$20,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Casey Layne Vickrey, Docket No. 2007-1137-LII-E on August 12, 2009 assessing \$262 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding D & M Water Supply Corporation, Docket No. 2007-1211-MWD-E on August 12, 2009 assessing \$28,980 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lancaster Mini Mart Inc. dba Lancaster Mini Mart, Docket No. 2007-1300-PST-E on August 12, 2009 assessing \$2,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lehigh Cement Company, Docket No. 2007-1345-AIR-E on August 12, 2009 assessing \$160,140 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Treadwell, Staff Attorney at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Roofing Supply, L.L.C., Docket No. 2007-1494-PWS-E on August 12, 2009 assessing \$157 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding David Fenoglio dba Sunset Water System, Docket No. 2007-1711-PWS-E on August 12, 2009 assessing \$10,210 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ludivinia Granados dba Venicias Bar, Docket No. 2007-1778-PST-E on August 12, 2009 assessing \$3,675 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Sixto Nava Alvarado dba Alvarado's Lawn and Maintenance Service, Docket No. 2007-1797-LII-E on August 12, 2009 assessing \$750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Treadwell, Staff Attorney at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valero Refining-Texas, L.P., Docket No. 2007-1813-MLM-E on August 12, 2009 assessing \$108,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2007-1985-AIR-E on August 12, 2009 assessing \$496,201 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Larry G. Moore, Docket No. 2008-0011-PST-E on August 12, 2009 assessing \$3,675 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-0635, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2008-0153-AIR-E on August 12, 2009 assessing \$106,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mohammad Sultan, Docket No. 2008-0475-PST-E on August 12, 2009 assessing \$6,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie Frazee, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding B & M Marshall Road, Ltd., Docket No. 2008-0583-EAQ-E on August 12, 2009 assessing \$25,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding D. L. Finney Investments, Inc., Docket No. 2008-0586-WQ-E on August 12, 2009 assessing \$2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kenneth Campbell, Docket No. 2008-0614-MLM-E on August 12, 2009 assessing \$2,378 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mohammad A. Swati, Docket No. 2008-0724-PST-E on August 12, 2009 assessing \$1,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie Frazee, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Copperas Cove MHC, L.L.C. dba Cedar Grove Mobile Home Park, Docket No. 2008-0835-PWS-E on August 12, 2009 assessing \$90 in administrative penalties with \$18 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lochinvar Golf Club, Docket No. 2008-0884-MWD-E on August 12, 2009 assessing \$6,600 in administrative penalties with \$1,320 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LUFKIN CREOSOTING CO., INC., Docket No. 2008-0904-MLM-E on August 12, 2009 assessing \$18,262 in administrative penalties with \$3,652 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Grupo Victoria Corporation dba Los Tejanos Meat Market, Docket No. 2008-1071-PST-E on August 12, 2009 assessing \$6,096 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy Mitchell, Staff Attorney at (512) 239-0701, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Oil Company and Shell Chemical LP, Docket No. 2008-1092-AIR-E on August 12, 2009 assessing \$71,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Denny Oil Company dba North Street Texaco, Docket No. 2008-1266-PST-E on August 12, 2009 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gene's Go Truck Stop, Inc., Docket No. 2008-1318-PST-E on August 12, 2009 assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip Goodwin, Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LOZANO, LTD. dba Lozano Store, Docket No. 2008-1436-PST-E on August 12, 2009 assessing \$7,650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip Goodwin, Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KANEKA TEXAS CORPORATION, Docket No. 2008-1466-AIR-E on August 12, 2009 assessing \$6,350 in administrative penalties with \$1,270 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dumas Used Cars, Inc., Docket No. 2008-1549-PST-E on August 12, 2009 assessing \$5,250 in administrative penalties with \$1,650 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cedar Park, Docket No. 2008-1552-MWD-E on August 12, 2009 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Wolfe City, Docket No. 2008-1557-PWS-E on August 12, 2009 assessing \$1,797 in administrative penalties with \$332 deferred.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Arnold Trucking, Inc., Docket No. 2008-1578-WQ-E on August 12, 2009 assessing \$3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Becky Combs, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Javier Hernandez, Docket No. 2008-1706-PST-E on August 12, 2009 assessing \$5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Becky Combs, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Value Family Properties- Denton, L. P., Docket No. 2008-1712-WQ-E on August 12, 2009 assessing \$5,650 in administrative penalties with \$1,130 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Town of Flower Mound, Docket No. 2008-1725-MWD-E on August 12, 2009 assessing \$19,100 in administrative penalties with \$3,820 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Jacksonville, Docket No. 2008-1810-MWD-E on August 12, 2009 assessing \$5,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.



An agreed order was entered regarding PEACE PARTNERS CAR WASH, L.L.C. dba Super Stop 28, Docket No. 2008-1860-PST-E on August 12, 2009 assessing \$35,501 in administrative penalties with \$7,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eusebio Rodriguez, Jr. dba Rodriguez Best Pic & Meats Docket No. 2008-1872-PST-E on August 12, 2009 assessing \$8,062 in administrative penalties with \$1,612 deferred.

Information concerning any aspect of this order may be obtained by contacting Brianna Carlson, Enforcement Coordinator at (956) 430-6021, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of La Joya, Docket No. 2009-0030-PWS-E on August 12, 2009 assessing \$2,511 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Douglas Meier dba Meier Recycle Center, Docket No. 2009-0080-WQ-E on August 12, 2009 assessing \$3,150 in administrative penalties with \$630 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Seminole Pipeline Company, Docket No. 2009-0115-AIR-E on August 12, 2009 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Flint Hills Resources, LP, Docket No. 2009-0121-AIR-E on August 12, 2009 assessing \$12,950 in administrative penalties with \$2,590 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DCP Midstream, LP, Docket No. 2009-0123-AIR-E on August 12, 2009 assessing \$7,600 in administrative penalties with \$1,520 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sabina Petrochemicals LLC, Docket No. 2009-0140-AIR-E on August 12, 2009 assessing \$7,550 in administrative penalties with \$1,510 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Maverick County, Docket No. 2009-0197-PWS-E on August 12, 2009 assessing \$2,652 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding East Texas Precast Co., Ltd, Docket No. 2009-0199-IWD-E on August 12, 2009 assessing \$1,940 in administrative penalties with \$388 deferred.

Information concerning any aspect of this order may be obtained by contacting Carlie Konkol, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INEOS NOVA LLC, Docket No. 2009-0209-AIR-E on August 12, 2009 assessing \$5,642 in administrative penalties with \$1,128 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Magellan Terminals Holdings, L.P., Docket No. 2009-0211-AIR-E on August 12, 2009 assessing \$2,750 in administrative penalties with \$550 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Loop 12 Investment Corporation dba R Bar Food Mart, Docket No. 2009-0229-PST-E on August 12, 2009 assessing \$10,097 in administrative penalties with \$2,019 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KORI SERVICES, LTD. dba Lakeway Valero, Docket No. 2009-0231-PST-E on August 12, 2009 assessing \$21,759 in administrative penalties with \$4,351 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sam's Truck Stop Business, Inc., Docket No. 2009-0252-MLM-E on August 12, 2009 assessing \$2,823 in administrative penalties with \$564 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Honeywell International, Inc., Docket No. 2009-0264-AIR-E on August 12, 2009 assessing \$24,075 in administrative penalties with \$4,815 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Del Rio, Docket No. 2009-0284-PWS-E on August 12, 2009 assessing \$2,992 in administrative penalties with \$598 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MillerCoors, LLC, Docket No. 2009-0297-AIR-E on August 12, 2009 assessing \$7,640 in administrative penalties with \$1,528 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Viridis Energy (Texas), LP, Docket No. 2009-0298-AIR-E on August 12, 2009 assessing \$5,500 in administrative penalties with \$1,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ASH CORPORATION dba One Stop Shop, Docket No. 2009-0319-PST-E on August 12, 2009 assessing \$3,535 in administrative penalties with \$707 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huntsman Petrochemical Corporation, Docket No. 2009-0330-AIR-E on August 12, 2009 assessing \$19,050 in administrative penalties with \$3,810 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3420, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eagle Rock Field Services, L.P., Docket No. 2009-0331-AIR-E on August 12, 2009 assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Eagle Pass Water Works System, Docket No. 2009-0333-PWS-E on August 12, 2009 assessing \$6,466 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Avali Enterprise, Inc. dba Super Food Mart, Docket No. 2009-0335-PST-E on August 12, 2009 assessing \$3,112 in administrative penalties with \$622 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hieu Vo dba Gulfway Foodmart, Docket No. 2009-0348-PST-E on August 12, 2009 assessing \$12,269 in administrative penalties with \$2,453 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Houston, Docket No. 2009-0375-MWD-E on August 12, 2009 assessing \$2,540 in administrative penalties with \$508 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brian Kwon dba 7 Station, Docket No. 2009-0378-PST-E on August 12, 2009 assessing \$11,178 in administrative penalties with \$2,235 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dallas Texas Properties, Inc. dba Howdy Doody #11, Docket No. 2009-0393-PST-E on August 12, 2009 assessing \$10,621 in administrative penalties with \$2,124 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding North San Saba Water Supply Corporation, Docket No. 2009-0413-PWS-E on August 12, 2009 assessing \$1,274 in administrative penalties with \$254 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nico Jaap Deboer dba Hilltop Jersey Farm, Docket No. 2009-0415-AGR-E on August 12, 2009 assessing \$950 in administrative penalties with \$190 deferred.

Information concerning any aspect of this order may be obtained by contacting Lauren Smitherman, Enforcement Coordinator at (512) 239-5223, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Linda Kay Torres, Docket No. 2009-0417-MSW-E on August 12, 2009 assessing \$1,120 in administrative penalties with \$224 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nanu Patel, Docket No. 2009-0440-WQ-E on August 12, 2009 assessing \$4,356 in administrative penalties with \$871 deferred.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equalizer, Inc., Docket No. 2009-0446-AIR-E on August 12, 2009 assessing \$800 in administrative penalties with \$160 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CAL-MOD ENTERPRISES, LLC dba Hempstead Truck Stop, Docket No. 2009-0455-PST-E on August 12, 2009 assessing \$6,790 in administrative penalties with \$1,358 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Bogata, Docket No. 2009-0494-PWS-E on August 12, 2009 assessing \$1,050 in administrative penalties with \$210 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NAPM ENTERPRISES INC. dba Citgo Food Mart, Docket No. 2009-0528-PST-E on August 12, 2009 assessing \$3,075 in administrative penalties with \$615 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Jose Oliveros, Docket No. 2009-0567-WOC-E on August 12, 2009 assessing \$210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Producers Cooperative Association, Docket No. 2009-0618-PST-E on August 12, 2009 assessing \$875 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding City of Edinburg, Docket No. 2009-0619-WQ-E on August 12, 2009 assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Sand Hill Foundation, LLC, Docket No. 2009-00620-WR-E on August 12, 2009 assessing \$350 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding 5 & 1 Investors, Ltd., Docket No. 2009-0640-WQ-E on August 12, 2009 assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding ABC Custom Homes, Inc., Docket No. 2009-0641-WQ-E on August 12, 2009 assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Haciendas Adobe Development, LP, Docket No. 2009-0642-WQ-E on August 12, 2009 assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding The Fort Worth Boat Club, Docket No. 2007-1117-MWD-E on August 17, 2009 assessing \$11,880 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Staff Attorney at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Delores A. Duke dba Little Big Horn Services, Docket No. 2008-1303-PWS-E on August 24, 2009 assessing \$1,452 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Staff Attorney at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200903772

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 26, 2009



#### Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 4, 2009**. Section 7.075 also requires that the commission promptly

consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 4, 2009**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: A-1 Lufkin Rental Center, Inc. dba A-1 Johnny Portable Toilets; DOCKET NUMBER: 2009-0112-MLM-E; TCEQ ID NUMBER: RN103149076; LOCATION: 5572 South United States Highway 69, Lufkin, Angelina County; TYPE OF FACILITY: portable toilet rental facility; RULES VIOLATED: 30 TAC §330.15(a) and TWC, §26.121(a), by failing to prevent the unauthorized discharge or a pollutant into or adjacent to water in the state; 30 TAC §312.142(a) and (d), by failing to operate with a valid registration; PENALTY: \$1,625, Supplemental Environmental Project offset amount of \$1,625 applied to Angelina Beautiful Clean - Cleanup of Illegal Dumpsites; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Big City Crushed Concrete, L.P.; DOCKET NUMBER: 2008-0877-AIR-E; TCEQ ID NUMBER: RN104802079; LOCATION: 1000 North MacArthur Boulevard, Grand Prairie, Dallas County; TYPE OF FACILITY: portable concrete crushing plant; RULES VIOLATED: 30 TAC §116.115(a) and §116.615(2) and (9), Standard Permit General Conditions 1(I) and (J), and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain the water spray system in good working condition and apply water to the fines stockpile in order to minimize emissions and by failing to minimize emissions from all in-plant roads; 30 TAC §116.115(a) and §116.615(2), Standard Permit General Conditions 1(E) and (G), THSC, §382.085(b), by failing to equip conveyors with a half-moon or equivalent enclosure to minimize emissions and by failing to limit opacity to 10% from any transfer point on belt conveyors or any screen; 30 TAC §116.115(a) and §116.615(2), Standard Permit General Condition 2(B), and THSC, §382.085(b), by failing to limit throughput to 125 tons per hour; 30 TAC §116.115(a) and §116.615(2), Standard Permit General Conditions 1(H) and 2(D), THSC, §382.085(b), by failing to install permanently mounted spray bars on the transfer point, in the middle, or on the terminal end of the Kolberg TeleStacker conveyor and to limit the number of conveyors on-site to two; 30 TAC §116.115(a) and §116.615(2), Standard Permit General Condition 1(M)(i), and THSC, §382.085(b), by failing to maintain records of hours of operation, including daily start and stop times for a rolling 24 month period; 30 TAC §116.115(a) and §116.615(2), Standard Permit General Condition 2(H), and THSC, §382.085(b), by failing to notify the appropriate regional office in writing at least ten calendar days prior to locating at the site; and 30 TAC §116.115(a) and §116.615(2),

Standard Permit General Condition 2(E), and THSC, §382.085(b), by failing to prevent the location and operation of a crusher to the same site as any concrete batch plant; PENALTY: \$5,600; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Interglobe Trade Channel, Inc. aka F&H Station, Inc. dba Dossani Food Mart; DOCKET NUMBER: 2007-1600-PST-E; TCEQ ID NUMBER: RN101572444; LOCATION: 601 South Denton Drive, Lake Dallas, Denton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(a)(1)(A), (b)(2), and (A)(i)(III), TWC, §26.3475(a) and (c)(1), by failing to provide a method of release detection capable of detecting a release from any portion of the underground storage tank (UST) system which contained regulated substances, by failing to provide release detection for the piping associated with the USTs, and by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel; 30 TAC §334.7(d)(3) and §334.8(c)(5)(B)(ii), by failing to provide an amended UST registration to the commission for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3475(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.45(c)(3)(A), by failing to install an emergency shutoff valve (shear valve or impact valve) on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser; 30 TAC §334.49(b)(2) and TWC, §26.3475(d), by failing to provide corrosion protection to all underground components of an UST system which is designed or used to convey, contain, or store regulated substances; 30 TAC §115.246(6) and THSC, §382.085(b), by failing to maintain Stage II records at the Station and make them available for review upon request by agency personnel; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II Vapor Recovery System, and each current employee receives in-house Stage II vapor recovery training regarding the purpose and correct operation of the vapor recovery equipment; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; and 30 TAC §115.242(1)(C) and (9) and THSC, §382.085(b), by failing to upgrade the Stage II equipment to Onboard Refueling Vapor Recovery compatible systems, and by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump; PENALTY: \$27,430; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: KSS ENTERPRISES, INC. dba Best Stop 2; DOCKET NUMBER: 2009-0307-PST-E; TCEQ ID NUMBER: RN101432342; LOCATION: 7250 West Little York Road, Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II vapor space manifold and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; PENALTY: \$2,736; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(5) COMPANY: Nisar Ahmad dba Mesa Coastal and aka Tahira Company LLC; DOCKET NUMBER: 2008-0793-PST-E; TCEQ ID NUMBER: RN101805448; LOCATION: 10004 Mesa Drive, Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.242(1)(C) and THSC, §382.085(b), by failing to upgrade the Stage II equipment to onboard refueling vapor recovery compatible systems; 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months, and vapor space manifold and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by timely and proper submission of a completed UST registration and self-certification form to the agency at least 30 days before the expiration date of the delivery certificate; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: \$7,081; STAFF ATTORNEY: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(6) COMPANY: Ronnie Vance; DOCKET NUMBER: 2007-1779-PST-E; TCEQ ID NUMBER: RN101779163; LOCATION: 401 West McHarg Street, Stamford, Jones County; TYPE OF FACILITY: three inactive USTs; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after prescribed upgrade implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and TWC, §5.702 and 30 TAC §334.22(a), by failing to pay outstanding UST fees and associated late fees for TCEQ Financial Account Number 0002823U Fiscal Years 2000 - 2007; PENALTY: \$5,250; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(7) COMPANY: Sally F. Powell Company, Inc. dba Chad Powell Homes; DOCKET NUMBER: 2009-0021-WQ-E; TCEQ ID NUMBER: RN105652846; LOCATION: within the Dominion Subdivision located at Interstate Highway 10 West and Dominion Drive, San Antonio, Bexar County; TYPE OF FACILITY: single-family residential construction sites; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: \$1,800; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: Transcontinental Realty Investors, Inc.; DOCKET NUMBER: 2009-0016-MSW-E; TCEQ ID NUMBER: RN104795349; LOCATION: 9011 Lyndon Baines Johnson Freeway, Farmers Branch, Dallas County; TYPE OF FACILITY: municipal solid waste (MSW); RULES VIOLATED: 30 TAC §330.954(e)(1), by failing to obtain prior authorization from the executive director before interrupting, disturbing, or altering the final cover of a closed landfill, 30 TAC §330.955(g), by failing to properly backfill the excavated areas at the site; 30 TAC §330.955(c), by failing to ensure that the excavated MSW was removed to an authorized facility; and 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW;

PENALTY: \$35,700; STAFF ATTORNEY: Benjamin O. Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Truestates, LLC dba Braker Mart; DOCKET NUMBER: 2008-0702-MLM-E; TCEQ ID NUMBER: RN102276375; LOCATION: 2200 South Austin Avenue, Georgetown, Williamson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §213.5(d)(1), by failing to have a continuous monitoring leak detection method in place capable of detecting leaks in the inside wall of a double-walled UST system; 30 TAC §334.7(d)(3), §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to provide an amended UST registration to the agency for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition, and failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel each operating day; 30 TAC §334.45(c)(3)(A), by failing to install an emergency shutoff valve (also known as shear or impact valve) on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser; and 30 TAC §115.222(3) and THSC, §382.085(b), by failing to comply with the control requirements for emission limitation, as detected by sight, sound, or smell, anywhere in the liquid transfer or vapor balance system; PENALTY: \$8,500; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

TRD-200903743

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: August 25, 2009

### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 4, 2009**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules

within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 4, 2009**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Barbara Miller dba Turner Water Service; DOCKET NUMBER: 2008-0268-PWS-E; TCEQ ID NUMBER: RN101243129; LOCATION: 531 Marilyn Street, Fresno, Fort Bend County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(e) and Texas Health and Safety Code (THSC), §341.033(a), by failing to have all production, treatment, and distribution facilities of the public water supply operated at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the commission; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan for the water supply that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use; 30 TAC §290.41(c)(1)(F), by failing to have a sanitary control easement covering all property within 150 feet of the facility's water supply well; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices designed to ensure the good working condition and general appearance of the water system's facilities and equipment; 30 TAC §290.45(b)(1)(A)(ii) and THSC, §341.0315(c), by failing to provide a minimum pressure tank capacity of 50 gallons per connection; 30 TAC §290.46(m)(1)(B), by failing to perform an annual inspection of the facility's one pressure tank; 30 TAC §290.46(j), by failing to complete a customer service inspection certificate prior to providing continuous water service to new construction; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year and by failing to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers of the water system and that the information in the CCR is correct and consistent with compliance monitoring data provided to the TCEQ by July 1st; PENALTY: \$11,714; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(2) COMPANY: Brothers Paving, LLC; DOCKET NUMBER: 2008-1838-WQ-E; TCEQ ID NUMBER: RN105537534; LOCATION: 15 acre tract of land located approximately 900 feet south of Soria Drive and 3,000 feet east of United States Highway 83, Laredo, Webb County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollution Discharge Elimination System (TPDES) General Permit Number TXR15MB92 Part II Section E.3.d., by failing to post a construction site notice containing all required information in a location where it is readily available for viewing; and 30 TAC §305.125(1) and TPDES General Permit Number TXR15MB92 Part II Section E.3.a, and Part III

Sections C and F, by failing to develop a Storm Water Pollution Prevention Plan (SWP3) prior to obtaining coverage under the general permit and by failing to implement a SWP3 prior to commencing construction activities; PENALTY: \$3,150; STAFF ATTORNEY: Benjamin O. Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(3) COMPANY: Eulalio Trevino; DOCKET NUMBER: 2006-1845-PST-E; TCEQ ID NUMBER: RN101806420; LOCATION: 306 West Comal Street, Pearsall, Frio County; TYPE OF FACILITY: former service station with petroleum storage tanks; RULES VIOLATED: 30 TAC §334.6 and (b)(2)(C), by failing to submit a completed construction notification form for underground storage tank (UST) removal; 30 TAC §30.301(b) and §334.55(a)(3), by failing to ensure that an individual supervising the installation, repair, or removal of a UST holds an on-site supervisor license issued by the TCEQ; 30 TAC §334.55(a)(6), by failing to conduct the required release determination for the permanent removal of the UST system from service; and 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition; PENALTY: \$5,775; STAFF ATTORNEY: Dinniah Tadema, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: Gilbert Garcia dba ABC Sandblasting; DOCKET NUMBER: 2008-1380-MLM-E; TCEQ ID NUMBER: RN105074306 and RN105574842; LOCATION: 1409 Wathen Avenue, Austin, Travis County (Wathen Site) and 11105 Cameron Road, Austin, Travis County (Cameron Site) (collectively referred to as the sites); TYPE OF FACILITY: sandblasting business; RULES VIOLATED: 30 TAC §330.15(a)(3) by failing to prevent the disposal of municipal hazardous waste in a manner which endangers human health and the environment; 30 TAC §101.4(b) and THSC, §382.085(b), by failing to prevent the release of air contaminants which interfered with the normal use and enjoyment of property; 30 TAC §330.15(a)(3), by failing to prevent the disposal of municipal solid waste in a manner which endangers human health and the environment; and 30 TAC §116.110(a)(4) and THSC, §382.085(a) and (b), by failing to obtain a standard exemption prior to conducting sandblasting activity; PENALTY: \$9,000; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(5) COMPANY: Kara Leah Petty dba Country Inn Victoria; DOCKET NUMBER: 2009-0148-PWS-E; TCEQ ID NUMBER: RN105660211; LOCATION: 9286 State Highway 185 South, Victoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(b)(1), by failing to provide disinfection facilities for ground water supplies for the purpose of microbiological control and distribution protection; and 30 TAC §290.39(m), by failing to provide written notification to the commission of the startup of a new public water supply system; PENALTY: \$850; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(6) COMPANY: Milos Bednar; DOCKET NUMBER: 2009-0294-WQ-E; TCEQ ID NUMBER: RN105352249; LOCATION: 11730 Sleepy Hollow Road, Conroe, Montgomery County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to renew authorization to discharge storm water associated

with construction activities by June 3, 2008; PENALTY: \$9,630; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(7) COMPANY: Mohammad Rafiul Habib; DOCKET NUMBER: 2009-0072-PST-E; TCEQ ID NUMBER: RN101353555; LOCATION: 10560 New Church Road, Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition; TWC, §26.3475(d) and 30 TAC §334.49(a)(2), by failing to ensure that a corrosion protection system is designed, installed, operated, and maintained in a manner that corrosion protection is continuously provided to all underground metal components of the UST system; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$6,240; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: New Way Enterprise Inc. dba Time Out Food Mart 2; DOCKET NUMBER: 2008-1935-PST-E; TCEQ ID NUMBER: RN101892982; LOCATION: 1000 North Velasco Street, Angleton, Brazoria County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and vapor space manifold and dynamic back-pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; 30 TAC §334.48(c) and THSC, §382.085(b), by failing to upgrade the Stage II equipment to onboard refueling vapor recovery compatible systems; 30 TAC §334.48(c) and TCEQ Agreed Order Docket Number 2006-1537-PST-E, Ordering Provision Number 2.a., by failing to conduct effective manual or automatic inventory control procedures for the UST system; PENALTY: \$11,276; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(9) COMPANY: Stanley McMahan; DOCKET NUMBER: 2008-1905-MSW-E; TCEQ ID NUMBER: RN105376651; LOCATION: 202 Limestone County Road (CR) 461, Mexia, Limestone County; TYPE OF FACILITY: unauthorized disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$2,750; STAFF ATTORNEY: Benjamin Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Stoneridge Custom Homes, Inc.; DOCKET NUMBER: 2009-0473-WQ-E; TCEQ ID NUMBER: RN105566608; LOCATION: 3704 Eagle Nest Trail, Burleson, Tarrant County; TYPE OF FACILITY: residential development; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: \$1,050; STAFF ATTORNEY: Barham A. Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Terry Fuessel; DOCKET NUMBER: 2009-0479-OSS-E; TCEQ ID NUMBER: RN105004303; LOCATION: 1530 CR 211, Mertzon, Irion County; TYPE OF FACILITY: on-site sewage facility; RULES VIOLATED: 30 TAC §285.3(b)(1), by failing to obtain an authorization to construct an on-site sewage facility; PENALTY: \$262; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(12) COMPANY: Windwood Water System, Inc.; DOCKET NUMBER: 2009-0968-PWS-E; TCEQ ID NUMBER: RN101456168; LOCATION: 13526 Creekway Drive, Cypress, Harris County; TYPE OF FACILITY: public water supply system; RULES VIOLATED: 30 TAC §290.271(b), §290.274(a) and (c), and TCEQ DO 2005-1069-PWS-E, Ordering Provision Number 2, by failing to mail or directly deliver one copy of the CCR to each bill paying customer by July 1st of each year and by failing to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers of the water system and that the information in the CCR is correct and consistent with compliance monitoring data to the TCEQ by July 1st of each year; 30 TAC §290.51(a)(3), by failing to pay all annual and late Public Health Service fees for TCEQ Financial Administration Account Number 91010920 for Fiscal Year 2008; PENALTY: \$637; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

TRD-200903742

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: August 25, 2009



### Notice of Opportunity to Request a Public Meeting for a New Municipal Solid Waste Experimental Grease Trap Waste Processing Facility Registration

APPLICATION. Micro Dirt, Inc. d.b.a. Texas Organic Recovery, 15500 Goforth Road, Creedmoor, Travis County, Texas 78610, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 43024, to construct and operate a Type VI municipal solid waste experimental grease trap waste processing facility. The proposed facility, Texas Organic Recovery, will be located 3,750 feet west on Highway 21 from Highway 183, 11,100 feet north on Williamson Road, 3,300 feet southwest on Goforth Road at 15500 Goforth Road, Creedmoor, in Travis County. This facility is requesting authorization for heat treatment and separation processing of grease trap waste, use of the processed wastewater effluent in the existing composting operation, and recycling or disposal of the separated grease product. The registration application is available for viewing and copying at the TCEQ Region 11 Office, 2800 S. IH 35, Suite 100, Austin, Texas 78704-5700 and may be viewed online at [www.pla-engine.com](http://www.pla-engine.com).

PUBLIC COMMENT/PUBLIC MEETING. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. Comments may also be received if a public meeting is held on the facility. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission,



and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted prior to the notice of final determination. The executive director is not required to file a response to comments.

**EXECUTIVE DIRECTOR ACTION.** The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to reconsider the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

**INFORMATION.** Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically submitted to <http://www5.tceq.state.tx.us/ecmnts/index.cfm>. Individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Further information may also be obtained from Texas Organic Recovery at the address stated above or by calling Mr. Robert Thonhoff, Jr., P.E., Thonhoff Consulting Engineers, Inc. at (512) 328-6736.

TRD-200903771

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 26, 2009



### Notice of Water Quality Applications

The following notices were issued on August 12, 2009 through August 20, 2009.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

### INFORMATION SECTION

**LINDE NORTH AMERICA INC** which operates an industrial cryogenic gas separation plant producing oxygen and nitrogen from air, has applied for a major amendment to TPDES Permit No. WQ0004770000 to authorize an increase in the discharge of non-contact cooling tower blowdown from a daily average flow not to exceed 15,000 gallons per day to a daily average flow not to exceed 40,000 gallons per day via Outfall 001; and increase in the daily maximum flow not to exceed 30,000 gallons per day to a daily maximum flow not to exceed 80,000 gallons per day via Outfall 001. The current permit authorizes the discharge of non-contact cooling tower blowdown at a daily average flow not to exceed 15,000 gallons per day via Outfall 001. The facility is located one mile southwest of the City of Jewett and approximately 3/4 of a mile northwest of the intersection of U.S. Highway 79 and Highway 39 in Leon County, Texas.

**CITY OF MOUNT CALM** has applied for a renewal of TPDES Permit No. WQ0011464001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 36,000 gallons per day. The facility is located southeast of the City of Mount Calm, south of Farm-to-Market Road 339, approximately one mile east of the intersection of State Highway 31 and Farm-to-Market Road 339 in Hill County, Texas.

**TEXAS LIME COMPANY** which operates Texas Lime Company - Cleburne Plant, a quicklime, hydrated lime, and ground calcium carbonate manufacturing facility, has applied for a renewal of TPDES Permit No. WQ0003874000, which authorizes the discharge of non-contact cooling water at a daily average flow not to exceed 430,000 gallons per day via Outfall 001. The facility is located on the west side of Farm-to-Market Road 1434 immediately south of Cleburne State Park, approximately nine miles west of the City of Cleburne, Johnson County, Texas, 76033.

**MAVERICK COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 1**, which operates the Eagle Pass Power Station (a hydroelectric power generation plant), has applied for a renewal of TPDES Permit No. WQ0004149000, which authorizes the discharge of non-contact cooling water and previously monitored effluent (turbine leakage) at a daily maximum dry-weather flow not to exceed 116,000 gallons per day via Outfall 001. The facility is located between the Maverick County Canal and the Rio Grande at the end of Farm-to-Market Road 1907, approximately 1.75 miles southwest of the intersection of U.S. Highway 277 and Farm-to-Market Road 1907, 13.5 miles east of the City of Eagle Pass, Maverick County, Texas 78852.

**CITY OF BRADY** which operates Brady WWTP, a surface water treatment plant, has applied for a major amendment to convert the current Texas Land Application Permit No. WQ0004712000 to a Texas Pollutant Discharge Elimination System (TPDES) Permit and amend the permit to authorize the discharge of microfilter backwash water at a daily average flow not to exceed 75,000 gallons per day via Outfall 001. The permit will continue to authorize the disposal of reverse osmosis reject water via evaporation. The facility is located approximately 3/4 mile south of Brady Lake on Farm-to-Market Road 3022, approximately 2.5 miles west of the City of Brady, McCulloch County, Texas 76825.

**SID RICHARDSON CARBON LTD** which operates the Sid Richardson Carbon - Big Spring Plant, a carbon black manufacturing facility, has applied for a renewal of TCEQ Permit No. WQ0004771000, which authorizes authorized to dispose of waste heat boiler softener backwash, boiler evaporator bottoms blowdown, and miscellaneous equipment drains at a daily average flow of 890 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site are located on the west side of Midway Road, approximately one-mile north of Interstate Highway 20 and approximately 2.5 miles east of the City of Big Spring, Howard County, Texas 79720.

**CITY OF AUSTIN** has applied for a renewal of TCEQ Permit No. WQ0011363001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 292,000 gallons per day via surface irrigation of 200 acres of non-public access land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located within the Spicewood Balcones subdivision at 11207 Spicewood Parkway in the City of Austin in Travis County, Texas 78750.

**NORTH TEXAS DISTRICT COUNCIL ASSEMBLIES OF GOD** has applied for a major amendment to TPDES Permit No. WQ0013847001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 21,000 gallons per day to a daily average flow not to exceed 80,000 gallons per day. The facil-



ity is located approximately 400 feet southeast of the east end of Soil Conservation Service Dam No. 56, and approximately 2.5 miles east northeast of the City of Maypearl in Ellis County, Texas 75167.

SAM HOUSTON AREA COUNCIL BOY SCOUTS OF AMERICA has applied for a renewal of TPDES Permit No. WQ0014095001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located 2 miles northeast of the intersection of State Highway 6 and Farm-to-Market Road 2988 and 0.4 mile southeast of Sommersford Cemetery, on the unnamed tributary of Grassy Creek in Grimes County, Texas.

LAUGHLIN THYSSEN INC has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014947001, to authorize the discharge of water treatment plant forebay settled sludge supernatant at a daily average flow not to exceed 990,000 gallons per day. The facility is located at 928 19th Street Galena, Texas adjacent to Hunting Bayou, west of the intersection of the confluence of Hunting Bayou and the Houston Ship Channel, 1.1 miles upstream of the Federal Road crossing of Hunting Bayou in Harris County, Texas 77547. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.TCEQ.state.tx.us](http://www.TCEQ.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200903770

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 26, 2009

## **Texas Facilities Commission**

### **Request for Proposals #303-0-10117**

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-0-10117. TFC seeks a 5 year lease of approximately 9,267 square feet of office space in Bryan, Brazos County, Texas.

The deadline for questions is September 14, 2009 and the deadline for proposals is September 25, 2009 at 3:00 p.m. The award date is November 18, 2009. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=84714](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=84714).

TRD-200903757

Kay Molina

General Counsel

Texas Facilities Commission

Filed: August 25, 2009

### **Request for Proposals #303-9-11601-A**

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), announces the issuance of Request for Proposals (RFP) #303-9-11601-A. TFC seeks a 5 or 10 year lease of approximately 3,526 square feet of office space in Liberty County, Texas.

The deadline for questions is September 14, 2009, and the deadline for proposals is September 25, 2009, at 3:00 p.m. The award date is October 23, 2009. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=84711](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=84711).

TRD-200903728

Kay Molina

General Counsel

Texas Facilities Commission

Filed: August 24, 2009

## **Texas Health and Human Services Commission**

### **Public Notice**

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed effective date for this amendment is September 4, 2009.

The proposed amendment will delete the provisions for fiscal accountability for the non-state operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) 2008 cost reporting period and all periods thereafter effective September 4, 2009.

The proposed deletion of ICF/MR fiscal accountability is estimated to result in an aggregate annual expenditure of \$49,709 for the remainder of FFY 2009, with approximately \$34,180 in federal funds and approximately \$15,529 in state general revenue. For FFY 2010, the proposed deletion of fiscal accountability is estimated to result in an aggregate expenditure of \$596,505, with approximately \$407,174 in federal funds and approximately \$189,331 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Pam McDonald by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1373; by facsimile at (512) 491-1998; or by e-mail at [pam.mcdonald@hhsc.state.tx.us](mailto:pam.mcdonald@hhsc.state.tx.us). Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200903744

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: August 25, 2009

## **Department of State Health Services**

## Maximum Fees Allowed for Providing Health Care Information Effective September 4, 2009

The Department of State Health Services licenses general and special hospitals in accordance with the Health and Safety Code, Chapter 241. In 1995, the Texas Legislature amended the law to address the release and confidentiality of health care information. In 2009, the Texas Legislature amended the law, to reflect that payment information will no longer be included and a new option was added for electronic media. In accordance with Health and Safety Code, §241.154(e), the fee for providing a patient's health care information has been adjusted 6.2% to reflect the most recent changes to the consumer price index as published by the Bureau of Labor Statistics (BLS) of the United States Department of Labor. The BLS measures the average changes in prices of goods and services purchased by urban wage earners and clerical workers.

Health and Safety Code, §241.154 Provisions:

(b) Except as provided by subsection (d), the hospital or its agent may charge a reasonable fee for providing the health care information and is not required to permit the examination, copying, or release of the information requested until the fee is paid unless there is a medical emergency. The fee may not exceed the sum of:

(1) a basic retrieval or processing fee, which must include the fee for providing the first 10 pages of copies and which may not exceed \$42.54; and

(A) a charge for each page of:

(i) \$1.43 for the 11th through the 60th page of provided copies;

(ii) \$.71 for the 61st through the 400th page of provided copies;

(iii) \$.37 for any remaining pages of the provided copies; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies; or

(2) if the requested records are stored on microform, a retrieval or processing fee, which must include the fee for providing the first 10 pages of the copies and which may not exceed \$64.81; and

(A) \$1.43 per page thereafter; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies.

(3) if the requested records are provided on a digital or other electronic medium and the requesting party requests delivery in a digital or electronic medium, including electronic mail:

(A) a retrieval or processing fee, which may not exceed \$75; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies.

(c) In addition, the hospital or its agent may charge a reasonable fee for:

(1) execution of an affidavit or certification of a document, not to exceed the charge authorized by Civil Practice and Remedies Code, §22.004; and

(2) written responses to a written set of questions, not to exceed \$14.40 for a set.

(d) A hospital may not charge a fee for:

(1) providing health care information under Subsection (b) to the extent the fee is prohibited under Health and Safety Code, Chapter 161, Subchapter M;

(2) a patient to examine the patient's own health care information;

(3) providing an itemized statement of billed services to a patient or third-party payor, except as provided under Chapter 324; or

(4) health care information relating to treatment or hospitalization for which workers' compensation benefits are being sought, except to the extent permitted under Labor Code, Chapter 408.

This information is published only as a courtesy to licensed hospitals. Hospitals are responsible for verifying that any fees charged for health care information are in accordance with the Health and Safety Code, Chapter 241.

Statute references in this notice may be located as follows:

Civil Practice and Remedies Code, §22.004:

<http://tlo2.tlc.state.tx.us/statutes/cp.toc.htm>;

Health and Safety Code, Chapters 161 and 324:

<http://tlo2.tlc.state.tx.us/statutes/hs.toc.htm>; and Labor Code, Chapter

408: <http://tlo2.tlc.state.tx.us/statutes/la.toc.htm>.

If you have any questions, please contact the Department of State Health Services, Facility Licensing Group, 1100 West 49th Street, P.O. Box 149347, Austin, TX 78714-9347, telephone number (512) 834-6648.

TRD-200903675

Lisa Hernandez

General Counsel

Department of State Health Services

Filed: August 21, 2009

## Houston-Galveston Area Council

### Request for Proposals

The Houston-Galveston Area Council solicits proposals from qualified organizations to provide quality child care initiatives and activities. A proposal package will be available for download at [www.h-gac.com](http://www.h-gac.com) or [www.wrksolutions.com](http://www.wrksolutions.com) beginning at 12:00 noon Central Standard Time on Thursday, August 13, 2009. Hard copies of the proposal package will also be available at that time. A bidder's conference is scheduled for Monday, August 17, 2009 starting at 2:00 p.m. at the Houston-Galveston Area Council offices, 3555 Timmons Lane, 2nd floor, Conference Room A, Houston, Texas.

Proposals are due at H-GAC offices on or before 12:00 noon Central Daylight Time on Thursday, September 3, 2009. Mailed proposals must be postmarked no later than Monday, August 31, 2009. H-GAC will not accept late proposals; we will make no exceptions. Prospective bidders may contact Carol Kimmick at (713) 627-3200 or [carol.kimmick@h-gac.com](mailto:carol.kimmick@h-gac.com) or visit the web site to request a proposal package.

TRD-200903738

Jack Steele

Executive Director

Houston-Galveston Area Council

Filed: August 24, 2009

## Texas Department of Insurance

### Notice of Annual Filing Texas Windstorm Insurance Association

The Department received the Texas Windstorm Insurance Association (Association) annual filing of a proposed manual rate for all types and classes of risks written by the Association (rate filing) on August 17, 2009. The filing was made pursuant to Texas Insurance Code

§2210.352. Copies of the Association's rate filing are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, TX 78701 during regular business hours. For further information or to request copies of the filing, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Reference No. P-0809-02).

#### PERIOD TO REQUEST ADDITIONAL SUPPORTING INFORMATION

Pursuant to Texas Insurance Code §2210.354 interested persons may file a written request with the Commissioner for additional supporting information from the Association related to this filing. All written requests for additional supporting information must be submitted to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, TX 78714-9104 on or before September 1, 2009. An additional copy of the requests must be submitted to J'ne Byckovski, Chief Actuary, P.O. Box 149104, MC 105-5F, Austin, TX 78714-9104.

#### DATE FOR SUBMITTING COMMENTS

Interested persons may also submit written comments on the filing to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, TX 78714-9104 prior to September 30, 2009. An additional copy of the comments must be submitted to J'ne Byckovski, Chief Actuary, P.O. Box 149104, MC 105-5F, Austin, TX 78714-9104.

TRD-200903655

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: August 19, 2009

## Texas Department of Licensing and Regulation

### Vacancies for Public Members

The Texas Department of Licensing and Regulation announces a vacancies for public members on the following boards: Air Conditioning and Refrigeration Contractors Advisory Board; Auctioneer Education Advisory Board; Board of Boiler Rules; Advisory Board on Cosmetology; Licensed Court Interpreters Advisory Board; Property Tax Consultants Advisory Council; and Towing, Storage and Booting Advisory Board. The purpose of the public member vacancies is to advise the Texas Commission of Licensing and Regulation (Commission) in adopting rules.

The public members are appointed by the presiding officer of the Commission, with the Commission's approval. This announcement is for the position of a public member.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 475-4765, FAX (512) 475-2874 or email [advisory.boards@license.state.tx.us](mailto:advisory.boards@license.state.tx.us). Applications may also be downloaded from the Department website at: [www.license.state.tx.us](http://www.license.state.tx.us).

Applicants may be asked to appear for an interview; however any required travel for an interview would be at the applicant's expense.

TRD-200903782

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: August 26, 2009

### Vacancies on Advisory Board on Cosmetology

The Texas Department of Licensing and Regulation (Department) announces two vacancies on the Advisory Board on Cosmetology (Board) established by Texas Occupations Code, Chapter 1602. The pertinent rules may be found in 16 Texas Administrative Code §83.65. The purpose of the Advisory Board on Cosmetology is to advise the Texas Commission of Licensing and Regulation (Commission) and the Department on: education and curricula for applicants; the content of examinations; proposed rules and standards on technical issues related to cosmetology; and other issues affecting cosmetology.

The Board is composed of seven members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of one member who holds a license for a beauty shop that is part of a chain of beauty shops; one member who holds a license for a beauty shop that is not part of a chain of beauty shops; one member who holds a private beauty culture school license; two members who each hold an operator license; one member who represents a licensed public secondary or post secondary beauty culture school; and one public member. Members serve staggered six-year terms, with the terms of one or two members expiring on the same date each odd-numbered year. This announcement is for the vacancies of a licensed public secondary or post secondary beauty culture school and a public member.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 475-4765, FAX (512) 475-2874 or email [advisory.boards@license.state.tx.us](mailto:advisory.boards@license.state.tx.us). Applications may also be downloaded from the Department website at: [www.license.state.tx.us](http://www.license.state.tx.us). Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-200903779

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: August 26, 2009

### Vacancies on Auctioneer Education Advisory Committee

The Texas Department of Licensing and Regulation (Department) announces vacancies on the Auctioneer Education Advisory Committee (Committee) established by Texas Occupations Code, Chapter 1802. The pertinent rules may be found in 16 Texas Administrative Code §67.65. The purpose of the Auctioneer Education Advisory Board is to advise the Texas Commission of Licensing and Regulation (Commission) on educational matters.

The Committee is composed of seven members appointed by the presiding officer of the Commission, with the Commission's approval. Three members are licensed auctioneers; one member is the Executive Director of the Texas Department of Economic Development or the director's designee; one member is the Commissioner of Education or the commissioner's designee; and two public members. The auctioneer members appointed under Section 1802.102(a)(1) serve two-year terms that expire on September 1. The remaining members are ex officio members. Each ex officio member shall continue to serve during the time the member holds office.

This announcement is for two public member positions.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 475-4765,

FAX (512) 475-2874 or email [advisory.boards@license.state.tx.us](mailto:advisory.boards@license.state.tx.us). Applications may also be downloaded from the Department website at: [www.license.state.tx.us](http://www.license.state.tx.us).

Applicants may be asked to appear for an interview, however any required travel for an interview would be at the applicant's expense.

TRD-200903777

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: August 26, 2009



#### Vacancies on Board of Boiler Rules

The Texas Department of Licensing and Regulation (Department) announces two vacancies on the Board of Boiler Rules (Board) established by Texas Health and Safety Code, Chapter 755. The pertinent rules may be found in 16 Texas Administrative Code §65.65. The purpose of the Board of Boiler Rules is to advise the Texas Commission of Licensing and Regulation (Commission) in the adoption of definitions and rules relating to the safe construction, installation, inspection, operating limits, alteration, and repair of boilers and their appurtenances.

The Board is composed of eleven members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of three members representing persons who own or use boilers in this state; three members representing companies that insure boilers in this state; one member representing boiler manufacturers or installers; one member representing organizations that repair or alter boilers in this state; one member representing a labor union and two public members. Members serve staggered six-year terms, with the terms of three members expiring January 31 of each odd-numbered year. This announcement is for the public member positions.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 475-4765, FAX (512) 475-2874 or email [advisory.boards@license.state.tx.us](mailto:advisory.boards@license.state.tx.us). Applications may also be downloaded from the Department website at: [www.license.state.tx.us](http://www.license.state.tx.us).

Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-200903778

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: August 26, 2009



#### Vacancies on Towing, Storage and Booting Advisory Board

The Texas Department of Licensing and Regulation (Department) announces two vacancies on the Towing, Storage and Booting Advisory Board (Board) established by Texas Occupations Code, Chapter 2308 and Chapter 2303. The pertinent rules may be found in 16 Texas Administrative Code §85.650 and §86.650. The purpose of the Towing, Storage and Booting Advisory Board is to advise the Texas Commission of Licensing and Regulation (Commission) and the Department on technical matters relevant to the administration and enforcement of Chapter 2308 and Chapter 2303, including examination content, licensing standards, and continuing education requirements.

The Board is composed of ten members appointed by the presiding officer of the Commission, with the Commission's approval. The board consists of the following members: one representative of a towing com-

pany operating in a county with a population of less than one million; one representative of a towing company operating in a county with a population of one million or more; one owner of a vehicle storage facility located in a county with a population of less than one million; one owner of a vehicle storage facility located in a county with a population of one million or more; one parking facility owner; one law enforcement officer from a county with a population of less than one million; one law enforcement officer from a county with a population of one million or more; one representative of property and casualty insurers who write automobile insurance in this state; one representative of a booting company; and one public member. Members serve terms of six years, with the terms of two or three members, as appropriate, expiring on February 1 of each odd-numbered year. This announcement is for the positions of a representative of booting company and a public member.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 475-4765, FAX (512) 475-2874 or email [advisory.boards@license.state.tx.us](mailto:advisory.boards@license.state.tx.us). Applications may also be downloaded from the Department website at: [www.license.state.tx.us](http://www.license.state.tx.us). Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-200903781

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: August 26, 2009



#### Vacancy on Air Conditioning and Refrigeration Contractors Advisory Board

The Texas Department of Licensing and Regulation (Department) announces a vacancy on the Air Conditioning and Refrigeration Contractors Advisory Board (Board) established by Texas Occupations Code, Chapter 1302. The pertinent rules may be found in 16 Texas Administrative Code §75.65. The purpose of the Air Conditioning and Refrigeration Contractors Advisory Board is to advise the Texas Commission of Licensing and Regulation (Commission) in adopting rules, administering and enforcing this chapter, and setting fees.

The Board is composed of seven members appointed by the presiding officer of the Commission, with the Commission's approval. The board consists of one official of a municipality with a population of more than 250,000; one official of a municipality with a population of not more than 250,000; and four full-time licensed air-conditioning and refrigeration contractors, as follows: one member who holds a Class A license and practices in a municipality with a population of more than 250,000; one member who holds a Class B license and practices in a municipality with a population of more than 25,000 but not more than 250,000; one member who holds a Class A license and practices in a municipality with a population of not more than 25,000; and one member of the advisory board must be a public member. At least one appointed board member must be an air conditioning and refrigeration contractor who employs organized labor and at least two appointed members must be air conditioning and refrigeration contractors who are licensed engineers. The executive director and the chief administrator of this chapter serve as ex officio, nonvoting members of the board. Members serve staggered six-year terms. The terms of two appointed members expire on February 1 of each odd-numbered year. This announcement is for the public member position.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 463-6599, FAX (512) 475-2874 or email [advisory.boards@license.state.tx.us](mailto:advisory.boards@license.state.tx.us). Applications may also be downloaded from the Department's website at: [www.license.state.tx.us](http://www.license.state.tx.us).

Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-200903776

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: August 26, 2009



### Vacancy on Property Tax Consultants Advisory Council

The Texas Department of Licensing and Regulation (TDLR) announces a vacancy on the Property Tax Consultants Advisory Council (Council) established by Texas Occupations Code, Chapter 1152. The pertinent rules may be found in 16 Texas Administrative Code §66.65. The purpose of the Property Tax Consultants Advisory Council is to advise the Texas Commission of Licensing and Regulation (Commission) on standards of practice, conduct, and ethics for registrants; setting fees; examination contents and standards of performance for senior property tax consultants; recognition of continuing education programs and courses for registrants; and establishing educational requirements for initial applicants.

The Council is composed of seven members appointed by the presiding officer of the Commission, with the Commission's approval. The Council consists of six registered property tax consultants and one public member. Each person appointed for membership on the council must: be a registered senior property tax consultant; be a member of a nonprofit, voluntary trade association that has a membership primarily composed of individuals who perform property tax consulting services in this state or who engage in property tax management in this state for other persons, has written experience and examination requirements for membership, and subscribes to a code of professional conduct or ethics; be a resident of this state for the five years preceding the date of the appointment; and have performed or supervised the performance of property tax consulting services as the individual's primary occupation continuously for the five years preceding the date of the appointment. Members serve staggered three-year terms. This announcement is for the public member position.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 475-4765 fax (512) 475-2874 or email [advisory.boards@license.state.tx.us](mailto:advisory.boards@license.state.tx.us). Applications may also be downloaded from the Department website at: [www.license.state.tx.us](http://www.license.state.tx.us).

Applicants may be asked to appear for an interview; however any required travel for an interview would be at the applicant's expense.

TRD-200903780

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: August 26, 2009



### Texas Lottery Commission

#### Notice of Public Comment Hearing

A public hearing to receive public comments regarding amendments to 16 TAC §402.406 relating to Bingo Chairperson, proposed new 16 TAC §402.420 relating to Qualifications and Requirements for Conductor's License, and proposed repeal of 16 TAC §402.304 relating to System Service Provider, will be held on Thursday, September 17, 2009, at 10:00 a.m. at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 E. Sixth Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, and Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-200903659

Sandra Joseph

Special Counsel

Texas Lottery Commission

Filed: August 20, 2009



### North Central Texas Council of Governments

#### Request for Proposals to Implement a Regional Traffic Signal Retiming Program

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consultant firms to implement a Regional Traffic Signal Retiming Program, which will include retiming of approximately 375 signalized intersections in the Dallas-Fort Worth Non-Attainment Area. The planning area consists of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties. The Regional Traffic Signal Retiming Program will include establishment of a baseline analysis, implementation of signal retiming, performing a subsequent analysis (improved conditions) and preparing an executive summary of the program. Engineering services are anticipated for this effort.

#### Due Date

Proposals must be received no later than 5 p.m., Central Daylight Time, on Friday, October 2, 2009, to Natalie Bettger, Senior Program Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the RFP, contact Therese Bergeon, at (817) 695-9267.

#### Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

#### Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be

discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200903775

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: August 26, 2009



## Public Utility Commission of Texas

### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on August 17, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Southwestern Bell Telephone Company d/b/a AT&T Texas for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 37363 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All inquiries should reference Project Number 37363.

TRD-200903678

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: August 21, 2009



### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on August 20, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 37371 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All inquiries should reference Project Number 37371.

TRD-200903752

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: August 25, 2009



### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on August 20, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 37372 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All inquiries should reference Project Number 37372.

TRD-200903753

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: August 25, 2009



### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on August 20, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Telecom Cable, LLC for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 37374 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All inquiries should reference Project Number 37374.

TRD-200903754

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: August 25, 2009



### Notice of Application for Designation as an Eligible Telecommunications Carrier and Application for Relinquishment of ETC Designation

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on July 9, 2009, for designation as an eligible telecommunications carrier (ETC) and application for relinquishment of ETC designation pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Telenational Communications, Inc. for Designation as an ETC in Areas Served by Cedar Valley Communications and Application of Cedar Valley Communications for Relinquishment of its ETC Designation. Docket Number 37205.

The Application: Telenational Communications, Inc. is requesting designation as an ETC in those areas in which Cedar Valley Communications currently is designated as an ETC. Simultaneously, Cedar Valley Communications requests relinquishment of its ETC designation in those areas in which it is currently so designated effective on the date of its merger into Telenational Communications, Inc.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by August 13, 2009. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 37205.

TRD-200903751  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 25, 2009



#### Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on August 18, 2009, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on August 21, 2009.

Docket Title and Number: Application of Windstream Communications Southwest for Approval of LRIC Study for Business 2nd Access Line Bundle Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 37367.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 37367. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 37367.

TRD-200903677  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 21, 2009



#### **Texas Department of Savings and Mortgage Lending**

Notice of Application for Change of Control of a Savings Bank  
Notice is hereby given that on June 22, 2009, application was filed with the Savings and Mortgage Lending Commissioner of Texas for change of control of Synergy Bank, SSB, McKinney, Texas, by James Edward Baxter II, Richmond, Virginia.

This application is filed pursuant to 7 TAC §§75.121 - 75.127 of the Rules and Regulations Applicable to Texas Savings Banks. These Rules are on file with the Secretary of State, Texas Register Division, or may be seen at the Department's offices in the Finance Commission Building, 2601 North Lamar, Suite 201, Austin, Texas 78705.

TRD-200903739  
Douglas B. Foster  
Commissioner  
Texas Department of Savings and Mortgage Lending  
Filed: August 25, 2009



#### **Texas Department of Transportation**

##### Aviation Advisory Committee Meeting

The following notice was posted to the Open Meetings site on August 26, 2009:

##### Aviation Advisory Committee Meeting

Flight Services Facility, Room 238

10335 Golf Course Road

Austin, TX 78719

September 24, 2009

1:00 p.m.

##### A G E N D A

1. Convene
2. Approve Minutes of June 11, 2009 meeting (Action)
3. Division Director discussion of state and federal aviation issues
4. Section Directors' activity reports on projects in their section:

Engineering

Flight Services

Grants Management & Administration

Planning & Programming

5. Division Director report on progress on intra-state airline being established in Texas

6. Schedule next meeting date and location (Action)

7. Public comment

8. Adjourn (Action)

TRD-200903764  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: August 26, 2009



##### Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

[http://www.txdot.gov/public\\_involvement/hearings\\_meetings](http://www.txdot.gov/public_involvement/hearings_meetings).

Or visit [www.txdot.gov](http://www.txdot.gov), click on Public Involvement and click on Hearings and Meetings.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PI-LOT.

TRD-200903740

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: August 25, 2009

## University of North Texas

### Notice of Intent to Amend and Extend Consulting Services Related to Public and Private-Sector Funding Sources for Research and Demonstration Activities

The University of North Texas ("UNT") intends to extend and amend a contract for consulting services related to Public and Private-Sector Funding Sources for Research and Demonstration Activities. The consulting services have been provided by Strategic Partnerships, LLC, under a contract with an initial term beginning November 4, 2008, and ending September 30, 2009. UNT intends to extend the term of the contract through September 30, 2010.

As required by Chapter 2254 of the Texas Government Code, prior to amending and extending its contract with Strategic Partnerships, LLC, UNT is posting this Notice of Intent to Amend and Extend the Consulting Contract, and hereby extends this invitation to qualified and experienced consultants interested in providing the consulting services described in this notice.

#### Scope of Work:

The selected federal government relations consulting firm will be responsible for assisting UNT with assessment of, and to advise on, public and private-sector funding sources for research and demonstration activities; to assist and advise on development, presentation and negotiation of grants, contracts and other agreements; to assist and advise on the design and execution of a government affairs and external relations plan for UNT; and to assist with the assessment of, and to advise on, funding for the UNT Fundraising Campaign.

#### Specifications:

Any consultant submitting an offer in response to this Invitation must provide the following: (1) the consultant's legal name, including type of entity (individual, partnership, corporation, etc.) and address; (2) background information regarding the consultant, including the number of years in business and the number of employees; (3) information regarding the qualifications, education, and experience of the team members proposed to conduct the requested services; (4) the hourly rate to be charged for each team member providing services; (5) the earliest date by which the consultant could begin providing the services; (6) a list of five client references, including any complex institutions or systems of higher education for which the consultant has provided similar consulting services; (7) a statement of the consultant's approach to providing the services described in the Scope of Work section of this Invitation, any unique benefits the consultant offers UNT, and any other information the consultant desires UNT to consider in connection with the consultant's offer; (8) information to assist UNT in assessing the consultant's demonstrated competence and experience providing consulting services similar to the services requested in this Invitation; (9) information to assist UNT in assessing the consultant's experience per-

forming the requested services for other complex institutions or systems of higher education; (10) information to assist UNT in assessing whether the consultant will have any conflicts of interest in performing the requested services; (11) information to assist UNT in assessing the overall cost to UNT for the requested services to be performed; and (12) information to assist UNT in assessing the consultant's capability and financial resources to perform the requested services.

#### Selection Process:

The consulting services sought herein relate to services previously provided to UNT by Strategic Partnerships, LLC. UNT intends to amend and extend its contract with Strategic Partnerships, LLC, unless a better offer, as determined by UNT in its sole discretion, is received in response to this invitation.

Selection of the Successful Offer (defined below) submitted in response to this Invitation by the Submittal Deadline (defined below) will be made using the competitive process described below. After the opening of the offers and upon completion of the initial review and evaluation of the offers submitted, selected consultants may be invited to participate in oral presentations. The selection of the Successful Offer may be made by UNT on the basis of the offers initially submitted, without discussion, clarification or modification. In the alternative, selection of the Successful Offer may be made by UNT on the basis of negotiation with any of the consultants. At UNT's sole option and discretion, it may discuss and negotiate all elements of the offers submitted by selected consultants within a specified competitive range. For purposes of negotiation, a competitive range of acceptable or potentially acceptable offers may be established comprising the highest rated offers. UNT will provide each consultant within the competitive range with an equal opportunity for discussion and revision of its offer. UNT will not disclose any information derived from the offers submitted by competing consultants in conducting such discussions. Further action on offers not included within the competitive range will be deferred pending the selection of the Successful Offer, however, UNT reserves the right to include additional offers in the competitive range if deemed to be in its best interest. After the submission of offers but before final selection of the Successful Offer is made, UNT may permit a consultant to revise its offer in order to obtain the consultant's best final offer. UNT is not bound to accept the lowest priced offer if that offer is not in its best interest, as determined by UNT. UNT reserves the right to: (a) enter into agreements or other contractual arrangements for all or any portion of the Scope of Work set forth in this Invitation with one or more consultants; (b) reject any and all offers and re-solicit offers; or (c) reject any and all offers and temporarily or permanently abandon this procurement, if deemed to be in the best interest of UNT.

#### Criteria for Selection:

The successful offer (Successful Offer) must be submitted in response to this Invitation by the Submittal Deadline will be the offer that is the most advantageous to UNT in UNT's sole discretion. Offers will be evaluated by University of North Texas personnel. The evaluation of offers and the selection of the Successful Offer will be based on the information provided to UNT by the consultant in response to the Specifications section of this Invitation. Consideration may also be given to any additional information and comments if such information or comments increase the benefits to UNT. The successful consultant will be required to enter into a contract acceptable to UNT.

#### Consultant's Acceptance of Offer:

Submission of an offer by a consultant indicates: (1) the consultant's acceptance of the Offer Selection Process, the Criteria for Selection, and all other requirements and specifications set forth in this Invitation; and (2) the consultant's recognition that some subjective judgments must be made by UNT during this Invitation process.



Finding by President:

The President of the University of North Texas finds that the consulting services are necessary because the University of North Texas does not have the specialized experience or the staff resources available to support existing and proposed programs of the University of North Texas. The University of North Texas believes that such expert consulting services will be cost effective, as they will result in an expansion of research and other types of funding for the University of North Texas and an increase in grants and contracts involving the University of North Texas.

Submittal Deadline:

To respond to this Invitation, consultants must submit the information requested in the Specification section of this Invitation and any other relevant information in a clear and concise written format to: Carrie Stoeckert, Assistant Director of PPS, University of North Texas, 2310 North Interstate 35-E, Denton, Texas 76205. Offers must be submitted in an envelope or other appropriate container and the name and return address of the consultant must be clearly visible. All offers must be received at the above address no later than 4:00 p.m., CST, Tuesday,

September 22, 2009 (Submittal Deadline). Submissions received after the Submittal Deadline will not be considered.

Questions:

Questions concerning this Invitation should be directed to: Carrie Stoeckert, Assistant Director of PPS, University of North Texas, 2310 North Interstate 35-E, Denton, Texas 76205, (940) 565-3200, carries@unt.edu. UNT may in its sole discretion respond in writing to questions concerning this Invitation. Only UNT's responses made by formal written addenda to this Invitation shall be binding. Oral or other written interpretations or clarifications shall be without legal effect.

TRD-200903748

Carrie Stoeckert

Assistant Director of PPS

University of North Texas

Filed: August 25, 2009

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### How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 33 (2008) is cited as follows: 33 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "33 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 33 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document format) version

through the Internet. For website subscription information, call the Texas Register at (512) 463-5561.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

#### TITLE 40. SOCIAL SERVICES AND ASSISTANCE

##### *Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).